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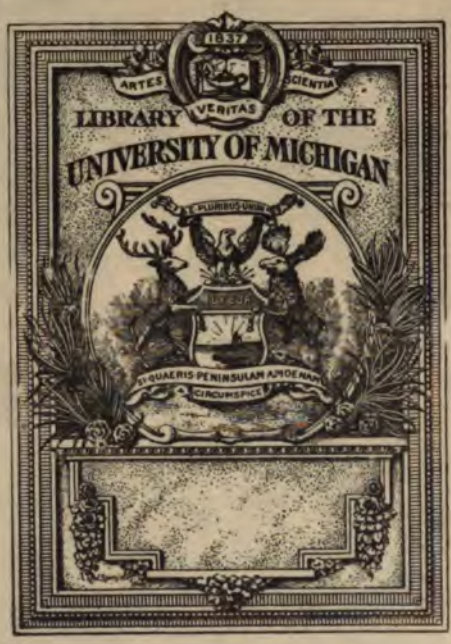
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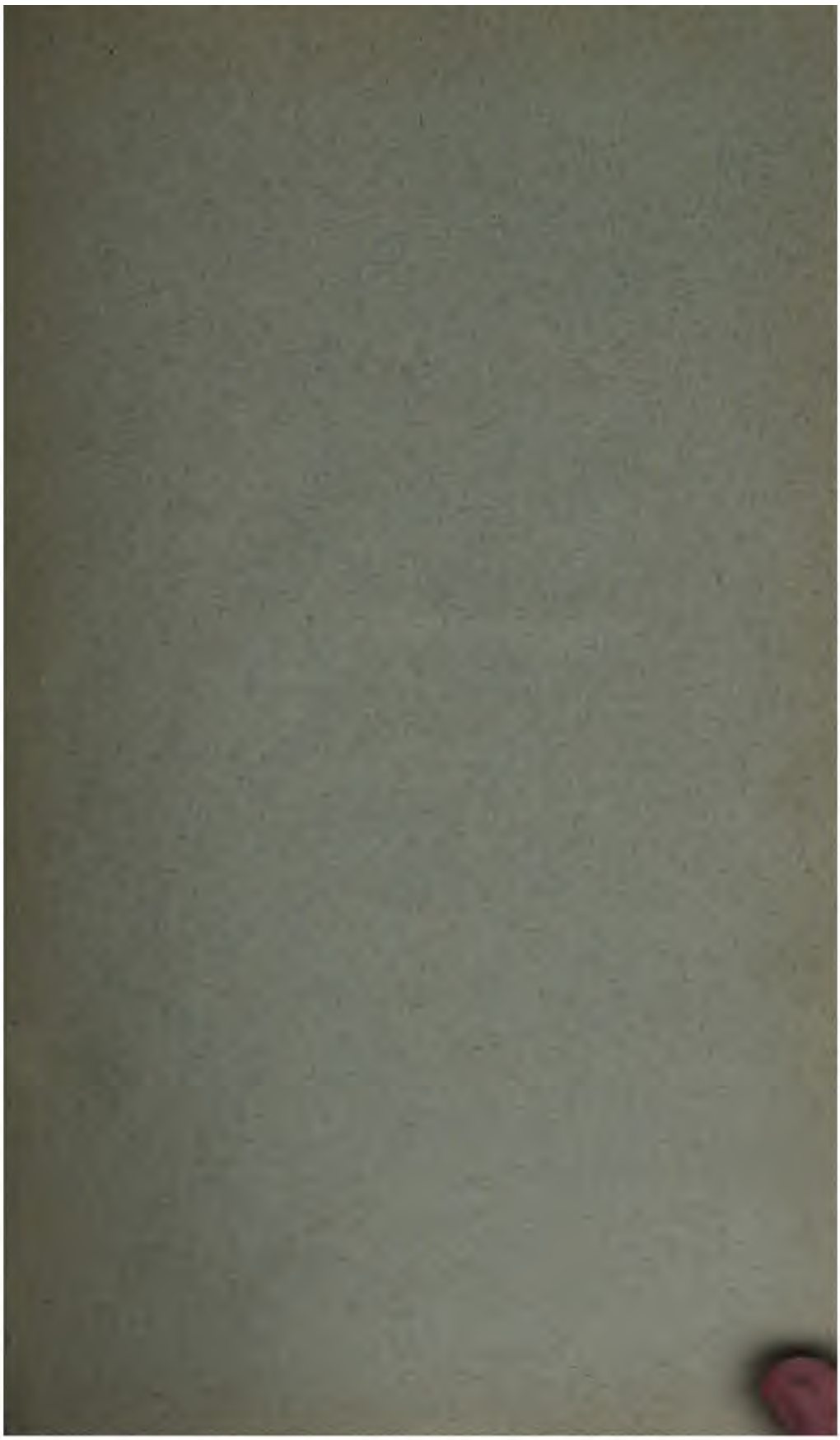

BULLETIN OF THE STATE UNIVERSITY OF IOWA
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THE EARLY HISTORY

OF

BANKING IN IOWA

BY
FRED D MERRITT, M.A., Ph.D.

Submitted in partial fulfillment of the requirements for the degree of Doctor of Philosophy in the State University of Iowa, Iowa City, Iowa. May, 1900

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PREFACE.

The period covered in this Early History of Banking in Iowa extends from 1836 to 1846, with short sketches of the political and economic conditions from 1846 to the Constitutional Convention of 1857. It includes the history of the Miners' Bank of Dubuque, the only chartered bank, and the discussions of banks in the Constitutional Conventions of 1844 and 1846.

The inter-relation of the economic and political characteristics of the period is fully treated, and so much of the social history is given as is necessary to make clear the economic and political. The historical setting of the more important topics has been given when it has been thought necessary to make clear the economic and political conditions.

The chronological order has been followed in the main, as the subject is not evolutional, but follows quite closely the passing financial and related political events of the other states of the Union. The only variation from a strictly chronological treatment is made where it has been thought necessary to give a summation of historical events to make clear the discussion of the topic following.

The material for this monograph is very intractable, in many cases, for it bristles with details which defy all attempts at condensation without consequent loss of clearness. Condensation has been made wherever it has been practicable.

The material from which the history of this period has been drawn is widely scattered. The principal part of it has been found in the library of the State Historical Society at Iowa City, including the Journals of the House of Representatives and Council of Iowa Territory, and the files of the Iowa Capital Reporter from 1841 to 1846, and the Iowa Standard from 1840 to 1845 and the Bloomington Herald from 1841 to 1846.

The file of the Dubuque Visitor and Iowa News was found at the Library of the State Historical Department lately merged into the Iowa State Library. Use has been made of material found in the library of the University of Chicago, The Newberry Library, the Chicago Public Library, and the Library of the State Historical Society of Wisconsin, obtained while pursuing investigations upon allied subjects. One can but regret the almost total disappearance of the earlier documents from the State archives, only two documents used in this monograph are found there.

Acknowledgments of thanks are due to Professor Isaac A. Loos, under whose direction the work was undertaken, for courtesies extended during research work and for assistance given in reading the advance sheets; but for any errors found in the text he should not be held responsible. Assistance has been given by Professor Benjamin F. Shambaugh and use has been made of his "Fragments of the Debates of the Iowa Constitutional Conventions of 1844 and 1846" to check the references cited for the Constitutional Conventions of 1844 and 1846.

Courtesies during investigation were extended by Miss Adelaide Lloyd, formerly Custodian of the Iowa State Historical Society; Charles Aldrich, Curator and Secretary of the State Historical Department of Iowa; Johnson Brigham, State Librarian, and his assistant, A. J. Small; Reuben G. Thwaites, Secretary and Superintendent of the State Historical Society of Wisconsin.

CHAPTER I.

Organization of The Miners' Bank of Dubuque.

1. *Introduction.*

There were in the United States in 1790 four[1] banks of issue with a capitalization of two and one-half million dollars, and an issue of paper money equal to the amount of that capital. At the close of the year 1810, eighty-eight banks were in operation, and in the next six years 138 more banks were organized. The total capital of all banks at this time was $89,822,422, with a circulation of $68,000,000, and a specie reserve of $19,000,000.

The period from 1816-20 was a period of general suspension of specie payments, accompanied by the evil results of a depreciated currency. By 1820[2] the circulation had decreased to $48,000,000 and loans and discounts in an even larger proportional amount. Debts were contracted in this depreciated paper money that after 1820 had to be paid at par.

By 1830,[3] there were in operation 329 banks; in 1834, 506; in 1835, 706; in 1836, 713. Many of these banks were organized with but a nominal capital, and of the paid-up capital much of it was in the form of stock notes of the directors. The issues of notes were very often from two to three times the nominal capital of the banks. The banks were in many instances located, if in existence at all, in places inaccessible to the general public.

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[1] Blodgett's Economica. These were: Bank of North America, Bank of Maryland, Bank of Massachusetts, Bank of New York. The last was operating without a charter. A charter was secured in 1791.

[2] Sec. Crawford's Report to Congress, Comptroller's Report, 1876, p. 159.

[3] Ibid.

It was under such conditions of the rapid growth of banks, governed only by very lax regulations, that the citizens of Dubuque applied to the Legislature of the Territory of Wisconsin in November, 1836, for the granting of a charter for a bank.

They were actuated not only by the general principles stated above, but also by local reasons. The mining region of the Fever River had its commercial needs satisfied by the Branch of the Bank of the State of Illinois at Galena; Mineral Point was making application to the Legislative Assembly of Wisconsin Territory for a charter for a bank to meet the supposed requirements of her commercial needs, and this movement to establish a bank at the Dubuque lead mines was simply the logical sequence of the commercial habits of the time.

The charter granted to them was modeled after the usual forms of bank charters of the previous decade.

2. *The Charter.*

The act[1] incorporating "The Miners' Bank of DuBuque" was approved on November 30th, 1836. Its capital stock[2] was to be two hundred thousand dollars, divided into shares of one hundred dollars each, and the "subscriptions toward the stock" were to be opened as soon as convenient after the act had been approved[3] by the Congress of the United States. Permission was granted to the commissioners not only to open the subscription books in the county of Dubuque, but also at such other places as they might think proper, and were to be kept open until the stock was subscribed.

Ezekiel Lockwood,[4] Francis Gehon,[5] John King, William

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[1] Act No. 7, Laws of the Territory of Wisconsin, 1836, p. 27. For a full copy of the text of the charter, the reader is referred to Appendix A.

[2] Charter. Sec. 1.

[3] Required by Chap. CCXXI, U. S. Statutes at Large, Vol. 5, p. 61, 24th Cong., 1st Sess., approved July 1, 1836.

[4] Merchant, Dubuque.

[5] Marshal of the Territory of Wisconsin; Captain in the Black-Hawk war; elected Delegate to Congress 1839, never acted; Member of Council of 6th Legislative Assembly.

Myers, Lucius H. Langworthy, Robert D. Sherman, William W. Corriell,[1] Simeon Clark and E. M. Bissell[2] were appointed as commissioners to receive the subscriptions, and also to be the first directors; one of their number was to be chosen president. They were to hold their offices until the first election for president and directors should take place. Thirty days' notice of the time and place of opening the subscription was to be given by publication in one or more newspapers in the county.

In case subscriptions[3] were made for more than the amount of the capital stock within the first three days after the books were opened, the commissioners were empowered to apportion the stock in a rateable proportion to the amount subscribed.

One tenth of each share was to be paid[4] to the commissioners at the time the subscriptions were made, and the balance in such installments and at such a time as the majority of the the directors should direct; "*provided*, that whenever the payment of any installment is required by the directors, they shall give at least ninety days notice thereof, in a newspaper, printed in the county, if there should be any published at the time; if not, then in a newspaper published in the territory the nearest to the said bank, but no one installment shall exceed ten dollars on each share."

Power was given to the majority[5] of the board of directors [6] to make the necessary by-laws for the management of the bank, in so far as they should be in consonance with the constitution and laws of the United States and of the Territory.

Power was given to the legislative assembly to require[7] at any time a sworn statement from the president and cashier of the bank as to the condition of the bank in regard to "the

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[1] Lawyer; Proprietor of the Du Buque Visitor—first paper printed in what is now Iowa.

[2] Afterwards Cashier of an Illegal Bank in Illinois.

[3] Charter, Sec. 2.

[4] Ibid, Sec. 3.

[5] Ibid, Sec. 7.

[6] Ibid, Seven Directors, Sec. 5.

[7] Ibid, Sec. 7, 2d clause.

amount of deposits, the profits on hand, the amount of bills in circulation, the amount of debts due from the directors and stockholders, the amount due from other persons or corporations, not however, naming them, the amount of specie in bank, the amount of bills of other banks, the amount of their deposits in other banks, the amount of their real estate, and of other property not herein specified, the amount of capital actually paid in, and shall contain the true exhibit of the real state of said bank."

The total amount[1] of all kinds of indebtedness of the bank at any time, over and above the amount of specie then deposited, was restricted to three times the sum of the capital stock then subscribed and paid in; and in case of excess, the directors, under whose administration it should occur, were to be liable in their separate and private capacities "*provided*, the bank shall not be able to pay its liabilities; *and, provided, also*, that this shall not be construed to exempt the said corporation or any estate, real or personal, which they may hold as a body corporate from being also liable for, or chargeable with, such excess; but such of the directors as were absent, when the said excess was contracted, or who may have dissented from the resolution or act whereby the same was contracted, shall not be so liable."

The management of the affairs of the bank was to be vested in a board of directors[2] of seven persons who were to be not only stockholders, but also residents and citizens of the Territory. Public notice was to be given in some newspaper for at least sixty days previous to the time of holding the annual election on the first Monday in October. Directors[3] were to be elected by a plurality of the votes[4] cast in person or by proxy. The directors were then to elect one of their number president. If a director ceased to be a stockholder, his office was to be considered vacant, and this or any other vacancy

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1 Charter, Sec. 8.
2 Ibid, Sec. 5.
3 Ibid, Sec. 12.
4 Ibid, Sec. 11.

was to be filled for the remainder of the year by the remaining directors. Provision was made that if, for any cause, the election of directors did not take place on the regular day,[1] the corporation was not to be deemed to be dissolved; but the election could be held some other day as "regulated by the laws and ordinances of the said corporation."

The bank was prohibited[2] from holding any land, except such as might be necessary for the convenient transaction of its business, or *bona fide* conveyances in satisfaction of debts previously contracted, or purchases at judgment sales for the satisfaction of debts owing to it.

Following the general course of bank charters of the time the corporation was denied the right of purchasing[3] or selling directly or indirectly, "any goods, wares, or merchandise, unless in selling the same when truly pledged by way of security, for debts due the said corporation, or purchasing the same at sales on judgments, which shall have been obtained for any debts previously contracted in the course of its dealings, and afterwards selling the same."

A majority[4] of the board of directors were empowered to declare the semi-annual dividends; and the number[5] of directors to constitute the board of discount was to be regulated by the by-laws.

General meetings[6] of the stockholders were provided for by three weeks previous notice in some newspaper printed in the county.

Assignment[7] or transfer of stock was not to be considered valid until registration had been made on the stock-books of the bank. The bank was fully protected by the fact that no stockholder was capable of making any assignment or transfer of his stock until all notes, debts, dues or endorsements of whatever nature, either due or becoming due, to the corporation were first paid.

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1 Charter, Sec. 6.
2 Ibid, Sec. 9.
3 Ibid, Sec. 9.
4 Ibid, Sec. 13.
5 Ibid, Sec. 14.
6 Ibid, Sec. 15.
7 Ibid, Sec. 16.

The property[1] of individual members of the corporation, vested in corporate funds, was made liable in the same manner "as other personal property is liable by the laws of the territory to the payment and satisfaction of his just debts to any of his bona fide creditors." Provisions were made for the levy and sale of the stock taken on execution, but before the sale could take place, it was provided: "that no property vested in the said corporate funds, shall be taken and sold until all the debts due or becoming due to the said bank, by such debtor, whether as a drawer or endorser or surety, shall be fully paid and discharged; and upon any execution being levied on any shares in said bank, it shall be the duty of the cashier of said bank to expose the proper book of the corporation to the officer, and to furnish him with a certificate, under his hand, in his official capacity, stating the number of shares the debtor holds in said bank and the amount of dividends declared and due thereon."

The rate[2] of discount was restricted to not more than seven per cent. per annum on its loans and discounts, in advance.

No note[3] or bill was to be issued of a less denomination than five dollars, and no bills were to be issued until forty thousand dollars in legal coin of the United States had been paid into the corporation by the stockholders as a part of the stock. Power was reserved to the Legislature to prohibit in four years from the date of the act the issue of notes of a less denomination than ten dollars, or in ten years of a less denomination than twenty dollars.

No director[4] was to be indebted to the bank at any time, either by loans or endorsements, or in any manner, to an amount exceeding five thousand dollars.

This act[5] was declared to be a public act for the time limited by the charter; provision was made: "that if said corporation shall fail to go into operation, or shall abuse or misuse

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1 Charter, Sec. 18.
2 Ibid, Sec. 19.
3 Ibid, Sec. 20.
4 Ibid, Sec. 22.
5 Ibid, Sec. 4. Expired May 1, 1857.

their privileges under this charter, it shall be in the power of the legislative assembly of this territory, at any time, to annul, vacate, and make void this charter."[1]

3. *Confirmation of the Charter by Congress.*

Congress, in the Act[2] confirming the banking laws of Wisconsin, amended the charter of The Miners' Bank of Dubuque in several particulars.

The bank was forbidden to issue bills or notes for circulation until one-half of the amount of its capital stock was paid in; and, in order to enable the directors to comply with this limitation, they were authorized to make calls according to the provisions of their charter, to an amount not exceeding, at any one time, forty per cent. upon the whole amount of stock subscribed by each stockholder, instead of being restricted to ten per cent. at any one time, as provided in the charter.

The privilege of determining whether the capital of the bank should be increased to more than two hundred thousand dollars was not left entirely within the power of the stockholders, but the previous consent of Congress must be obtained.

The bank must go into operation before the first of January, 1838, or the charter would be deemed void and of no effect.

4. *The Opening of the Bank.*

The commissioners readily accepted these provisions and immediately set in motion the necessary legal machinery to carry the modified charter into effect. In the Du Buque Visitor of May 17, 1837, we find in the editorial columns the statement that: "The books for the subscriptions of the stock of the Du Buque bank, chartered by the Territorial Assembly and sanctioned by Congress, will be opened on the 22nd

[1] Charter, Sec. 23.

[2] Approved March 3, 1837. Chap. LXXV, U. S. Statutes at Large, Vol. V, p. 198, 26th Cong. 2d Sess.

inst. See advertisement." The advertisement furnished the information that the books for subscriptions would be opened at the store of Francis Gehon, in the town of Dubuque, on Monday, Tuesday and Wednesday, the 22nd, 23rd and 24th of May next, and at that time ten per cent. of the amount subscribed would be required to be paid to the commissioners, making the amount to be paid in at that time twenty thousand dollars, which, as far as any of the conditions of the accepted charter were concerned, might be in either currency or silver.

In an editorial in the Iowa News of June 3rd, 1837, which felicitates the community upon the establishment and opening of a banking institution in their midst, it is said: "That we are happy to state that the whole of the stock of the Miners' Bank of Du Buque was subscribed for on the 22nd, 23rd and 24th, and 30th ult., on which days the books for the subscriptions were kept open by the commissioners of the bank."

In an advertisement in the Iowa News of June 3, 1837, there is a call for the payment of forty dollars upon each share of the capital stock of the bank at their office on the second Monday of October next — fifty per cent. of said installment to be specie. This was signed "By the order of the Board, E. Lockwood, President."

In the same newspaper as above, at a later date, notice is given of an election of directors to be held in accordance with the provisions of the charter, on Monday, the second day of October, at the counting room of E. Lockwood. As this date would not give the necessary thirty days' notice required by the charter, there is in the issue of September 30, 1837, an additional notice postponing the election to October 14th, at the same place.

Up to this date the notices in regard to subscriptions, payment of subscriptions, and official organization, had been made in accordance with the legal requirements of the charter and its modifications by Congress.

CHAPTER II.

The Legislative Investigations of 1837-38.

1. *The First Investigation.*

The bank opened[1] its doors for the transaction of business on October 31, 1837, with E. Lockwood as President, and G. D. Dillon as Cashier. The act of organization and selection of officers had been accompanied with considerable friction. E. M. Bissell, one of the commissioners, had at first been chosen for the position of cashier, but for some cause the appointment was revoked and G. D. Dillon substituted in his place.

Charges as to an attempt upon the part of stockholders with large holdings to secure the shares of the small holders were freely made. Charges were also made that the full amount of the required capital was not paid before issuing notes; and that the specie was borrowed for the specie payment upon the capital stock. These were followed with all kinds of rumors of corrupt action upon the part of the officers of the bank.

The public mind was in a condition to be easily influenced by such rumors and by the very nature of the past actions of banks, to be easily, almost willingly, led to believe them. The little community of Dubuque was soon agitated over its bank war.

These rumors soon reached the Legislative Assembly, then in session at Burlington, and on the fifteenth of November, 1837, Mr. Sholes, in the House of Representatives, moved that a committee of five[2] be appointed to inquire into the

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[1] It was first located in the house of Le Roy Jackson, near the corner of Clay and Ninth streets.

[2] Iowa News, Nov. 2, 1837.

condition and acts of the banks of the Territory. This was modified and passed on the next day, and a committee of three,[1] consisting of Messrs. Sheldon, Sholes and Engle, were appointed to make an examination of the Miners' Bank of Dubuque, Bank of Mineral Point and Bank of Milwaukee, and to report to the House at as early a date as possible.

This committee immediately proceeded to discharge the duties assigned to them by the resolution of the House. The committee stated that in consequence of the excitement, existing to some extent in the public mind, which had been propagated by rumors that were "calculated to affect injuriously the interests of the public and of the institution," and because the proper officers were not present from whom they would "receive the necessary information concerning the actual condition of the bank, they thought it necessary, and within the power vested in them by the resolution, to personally visit the bank." An additional reason was given for this course that by pursuing it there would be an opportunity afforded to the citizens of the town where the bank was located of stating to the committee the facts in their knowledge as to the character, management and operation of the institution.

The committee, upon their arrival at Dubuque, submitted in writing a list of questions to the President and Cashier of the Miners' Bank of Dubuque. The President of the bank was absent from the town, but the questions were answered by the Cashier.

From the answers returned by the Cashier to their interrogatories, they report that $100,000 of capital stock had been actually paid in, $41,147 of which was in specie, and the balance in the notes of the various banks of New York, Pennsylvania, Illinois, Wisconsin and Michigan. The amount of specie on hand was reported to be $42,118. The bank at that time had a circulation of $11,435, of which $2,000 were in demand notes, and $9,435 in post notes of twelve months after date. The individual deposits were—only $3,043. The debts

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[1] Iowa News, December 9, 1837.

due the bank from all persons and corporations was $57,321. The bills of other banks in their possession were $12,177. The real estate holdings of the bank were $950, the bank building and lot. The statement was also made that no director of the institution was "indebted to it in a larger sum than that prescribed by the charter." That the bank had always paid specie "when demanded at the counter." That the bank commenced discounting upon October 31st, and part of the discounts were made in its own bills and partly in the bills of other banks. Its own bills were partly demand and "some twelve months after date."

The committee, in continuation of their report, stated that they were satisfied with the answers and that they did not deem it necessary nor "within the scope of their authority to inspect the books of the bank, or to count the money, although every facility for that purpose was offered to them by the Cashier." The committee remained in Dubuque for 28 hours, but no persons appeared before them to make any reports either in favor of or against the character of the transactions of the bank.

The committee, from the investigation which they had made and from the facts which had come to their knowledge, reported[1] that they were of an unanimous opinion that the Miners' Bank of Dubuque was "in a sound and solvent condition." They also expressed the opinion that the bank had met all of the requirements of the charter. To this one of them dissented in regard to the issue of post notes, payable twelve months after date, upon which interest was charged at seven per cent., in advance, for loans made in these bills. The majority of the committee, while doubting the propriety of issuing such bills, did not look upon loans so made as an infraction of any of the provisions of the charter.

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[1] Iowa News, December 9, 1837.

2. *The Issuing of Post Notes.*

The issue of post notes by the Miners' Bank was one of the serious objections made against it, and in the minority report this was considered to be an infraction of its charter. In the charter there was no provision for issuing them, nor was there a provision forbidding their issue. This bank simply followed the precedents, some legal, some illegal, established by many banks, in the issue of this class of notes.

Leaving the question as to the legality or illegality of their issue for the present, let us turn to their early history, and as there is not a *resume* of the history of the issue of post notes in any one place, it may seem in some respects, at least, but proper to notice here in a fragmentary way, a few of the more important instances in which they had been issued in the past history of the country; and also some instances where the different states had prohibited them.

The term "post note" has given rise to confusion because it was applied to notes payable at some future date, either "to bearer" or "to order," either "with" or "without" interest; so there were really four classes of them to which the same name was applied.

At the close of the war for "Commercial Independence," [1] all of the banks had suspended specie payment. At the special session of the General Assembly of Connecticut, an act[2] was passed, on January 15th, 1815, which empowered each of the incorporated banks within the state to issue bills to the amount of one-half their paid up capital, payable on demand two years after the close of the war. These bills were to be receivable for all debts due to the banks. The bills of the banks were now put out under two forms: the first promised to pay the bearer in notes of New York banks, on demand at the specified banks at New York, or in specie two years after the war; the second promised to pay the bearer in specie two years after the war. By an act passed at the regular session

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[1] 1812.

[2] Session Laws, 1815.

of the General Assembly, in May, 1815,[1] the power of issuing these post notes by the banks was to cease on January 1st, 1816.

For the purpose of adding the business of buying and selling London exchange to their regular banking business, the Suffolk Bank directors, on the fifteenth of August, 1818, appointed a committee[2] to secure the necessary funds by the means of a loan based upon post notes.

On February 5th, 1819, the General Assembly of Ohio passed a law[3] which had for its purpose the compelling of banks to resume the payment of their notes in specie, it contained a provision which made it unlawful to issue bank notes payable at a future date. On December 24, 1824,[4] the Bank of the State of Alabama was authorized to issue post notes payable to order; they were not to be for a period exceeding one hundred and twenty days and were to be redeemed in specie.

The Massachusetts Legislature, in 1836,[5] allowed banks to issue post notes up to fifty per cent. of their capital and in denominations not less than five dollars. Interest was to be paid on these notes at the rate of four and one-half per cent. per annum; interest was to cease when due. This act was repealed on February 1, 1838.

Dr. Dyott's Manual Labor Bank of Philadelphia, in 1836, issued[6] post notes in denominations ranging from one to twenty dollars. This bank was in existence for a period of only about three years, and then failed with almost total loss to its creditors, who were mostly from the laboring classes.

On January 18, 1834, the Bank of Mobile and its branches were authorized[7] by the Legislature of Alabama to issue post notes, without interest, until a demand for payment was made. These notes were to be made payable to a specified person,

1 Session Laws, 1815.
2 The Suffolk Bank, p. 6.
3 Session Laws, 1819.
4 Session Laws, 1824.
5 Session Laws, 1836.
6 Niles Register, Vol. 56, p. 36.
7 Session Laws, 1834.

and the longest time for which they could be issued was ninety days. By the act[1] of January 2, 1835, the bank and its branches were allowed to issue post notes only to the extent of one-half of the paid up capital; one-half of these being made payable at Philadelphia, New York and Boston, in specie.

At a special session of the Legislature of Mississippi in 1837, an act[2] was passed allowing chartered banks to issue post notes to bear interest at a rate not exceeding five per cent. and to be loaned at a rate not exceeding nine per cent. The period of time for which they were to be issued was from six to thirteen months, and if not redeemed when due, they were to be endorsed and draw twelve and one-half per cent. interest. The banks must receive them for their own debts, and they were to be receivable for taxes, provided the bank had not at any time failed to pay its notes in specie.

In January, 1837, and again in October, 1838, the United States Bank of Philadelphia resorted to the use of sixty day post notes bearing six per cent. interest, and put them in circulation in those portions of the country where specie payments were not made by the banks.

The charter of the Union Bank of Mississippi was re-enacted[3] on February 5, 1838, there was no specific provision in it for the issue[4] of post notes, but there was a provision that it could not issue post notes of a less denomination than five dollars. It put out a large issue of these notes claiming that they were based upon the backing[5] of the state. It was of this bank that the eccentric Governor McNutt, in his Inaugural Message[6] of 1839, complained of its issuing depreciated post notes, thus forcing borrowers to pay at the rate of twenty-two per cent. per annum.

The Bank of Arkansas issued post notes from the time of

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1 Session Laws, 1835.
2 Acts, Special Session of Legislature, 1837.
3 Acts of Legislature of 1838.
4 Section of Charter.
5 6 Howard (Miss.) p. 627.
6 See Inaugural Message, p. 2.

its commencing business, and the Batesville Branch, in June 1838, had in circulation[1] $7,785 in demand notes, and $241,943 in post notes.

In 1840 a law[2] was passed in New York which defined the issuing of post notes as a misdemeanor, punishable by fine and imprisonment. In the same year the State of Mississippi, by an enactment[3] of its Legislature, forbade the issuing of post notes by any bank, and any violation of this law was to be punished by a forfeiture of charter.

"The subject referred to your committee[4] (post-notes) has received that attention which its importance demands; and although the Bank of Mineral Point has issued and is circulating a kind of paper which has given rise to some suspicions of her solvency and ability to meet her issues, we are not prepared to say that the policy pursued by her is not absolutely necessary to enable her to afford those facilities to the mining and commercial interests of the community in which she is located and which at this time are so much needed."—Committee on incorporations, Wisconsin Council, August 6, 1840.

Post notes were generally issued by the banks either as an expedient to tide them over until they were able to resume specie payment, or else under the guise of extending aid to the debtors while they were really borrowing from the would be borrowers from the bank. They may be well named "forced loans"; for the greatest portion of them bore no interest, and, if they did, it was always at a less rate than that charged the debtor for the loan of them. The borrowing of them was a transaction in which the debtor was always at a disadvantage. Upon the banks the effect of issuing post notes at the close of a speculative period, terminating in a panic, was to drive them lower and lower down into the depths of bankruptcy.

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[1] Report of Condition of Banks, 1852.
[2] Session Laws, 1840.
[3] Acts of Legislature, 1840.
[4] Journal of Council, 1840, p. 18.

3. *The Effects of the First Investigation.*

To a portion of the community,[1] the friends of the bank, the report of December, 1837, of the majority of the committee was perfectly satisfactory. In an editorial of the Iowa News calling attention to the reports of the results of the investigation of the banks of the Territory, it was stated that the Miners' Bank was now proven to be in a safe and sound condition and that no violations of the privileges of the charter had taken place. The writer also deprecated the attempts that had been made to injure the credit of the bank, not only at home but also abroad, as it was evident to all fair minded persons that it was a direct injury to the whole community. It was clearly shown that previous to this time the community had suffered from the evil effects of a currency made up of the bills of banks of nearly all the different states of the Union; and that in most cases it was impossible to decide which was good money and which was not. But, if the growth of the business of the bank was not hampered and even prevented by these attempts, then the community would be supplied with a currency, the character of which would be known at all times, and the natural tendency would be for this money to take the place of the former mixed currency with which they had been afflicted.

Again in the January 5th issue of the Iowa News, the editor re-asserted that to his knowledge the Miners' Bank of Dubuque was one of the "most solvent institutions in the country," and that "it is with surprise mingled with indignation" that he perceived that certain persons who were actuated by "malevolent and base motives" were seeking to "stir up popular excitement against it." The statement was also made that the bank had always promptly paid all of its own notes in specie, and was exchanging its own post notes for the notes of other banks, not redeeming them in specie. It called attention to the fact that it was obvious to all that those "who were endeavoring to create this excitement among the people, by raising false

[1] Iowa News, December 9, 1837.

reports and garbled statements," were actuated by "personal pique against the Directors;" and that this action upon their part entitled them to nothing but contempt from all.

The character of this report and of the editorials in the Iowa News was not such as to quiet the opposition to the bank. After an ineffectual attempt to secure the privilege of having printed in the Iowa News an article already written, and of one not yet written, the opposing faction had recourse in having their articles printed in the Miners' Free Press[1] of Mineral Point, and in other papers of the territory.

This newspaper war was followed up by flooding the Legislature with affidavits and statements, both for and against the financial condition of the bank. These were referred to a select committee which reported[2] that a joint committee should be appointed to investigate the affairs and conditions of the Miners' Bank of Dubuque. In accordance with this recommendation, a joint committee of two from each house was appointed; and was to make a report at the extra session of June, 1838.

4. *The Second Investigation.*

(*a*) The Interrogatories and Answers.

The select committee appointed[3] under a Joint Resolution of the Council and the House of Representatives of Wisconsin Territory, on the 19th day of January, 1838, to investigate the conditions and affairs of the Miners' Bank of Du Buque, met at the town of Du Buque on February 3rd, 1838, and proceeded to discharge the duties assigned to it.

Mr. Thos. McKnight was chosen chairman, and Joseph T. Fales, Clerk.

The committee addressed to the President and Cashier of the Bank the following communications :

MESSRS. LOCKWOOD & MARTIN,

Gentlemen:—The undersigned have been appointed a Special Committee by the Council and House of Representatives to

[1] Col. W. S. Hamilton, son of Alexander Hamilton, was the editor.

[2] Journal of House, 1837-38 p. 349.

[3] Joint Resolution of January 19, 1838.

examine into the affairs and conditions of the Bank under your direction, in pursuance of the following resolutions, viz: Resolved by the Council and House of Representatives of the Territory of Wisconsin, that a Joint Committee of two from each House, be appointed to investigate the affairs and conditions of the Miners' Bank of Du Buque, that said committee have power after adjournment to visit the bank in person, examine its books and papers, count the money in its vaults, and to examine whether the said bank has complied with the provisions of its charter or not, and that they have power to issue subpœnas and attachments, to compel the attendance of witnesses to testify on the subjects submitted to them by this resolution, and that said committee report at the extra session of the Legislative Assembly in June next.

ISAAC LEFLER, Speaker of H. R.

Attest: JOHN CATLIN, Chief Clerk.

"Copy."

In pursuance of the power vested in us, we respectfully address to you the following interrogatories, to which your answers in writing under oath or affirmation are requested:

1st. What amount of capital has actually been paid in?

2nd. In what kind of funds, how much specie, what amount of notes of other banks, and what banks?

3rd. What is the amount of your bills in circulation, with what amount purport to be payable upon demand, and what amount after date?

4th. What is the amount due the bank by directors and stockholders?

5th. What is the amount of debts due by other persons?

6th. What is the amount of debts due by corporations?

7th. What is the amount of your deposites with other banks?

8th. What is the amount of your real estate and other property?

9th. What is the amount of bills of other Banks in your possession, and what banks?

10th. What is the kind of funds with which your discounts have been made?

11th. And what amount of notes of each bank?

12th. What is the amount of stock you hold in other banks or corporations?

13th. Have you at any time refused the payment of specie for your bills when demanded at your counter?

14th. Have you at any time taken more than seven per cent. per annum in advance for loans and discounts?

15th. Have any of the directors been indebted to the bank at one time to an amount exceeding the sum of five thousand dollars by loans, endorsements or otherwise?

16th. Have you, upon discounted notes or drafts, given your notes payable to bearer, 12 months after date, and if so, was it agreed or understood that you would take such notes in payment of debts due the bank?

17th. Had you forty thousand dollars in specie on hand before any bills or notes were issued?

18th. If you have discounted with notes of other banks, will you receive the same notes in payments of debts due the bank?

19th. Are your deposites in other banks general or special, and what are the amounts?

Yours respectfully,
THOS. MCKNIGHT, Chr'm.
E. E. CHILDS.
JAS. P. COX.

Attest: JOSEPH T. FALES, Clerk.
February 3rd, 1838.

In reply the committee received the following:

MINERS' BANK, DU BUQUE, February 5th, 1838.

Sir:—Your communication informing me that you had been appointed a special committee by a joint resolution of the Council and House of Representatives of the Territory of Wisconsin to investigate the affairs and conditions of the Miners' Bank of Du Buque, enclosing a copy of the resolution under which you act, was received on Saturday evening. With the same communication I received the interrogatories which you propounded relating to the condition of the bank. Enclosed you will receive answers to the same which are respectfully submitted to your consideration.

I am, Very respectfully,
Your obedient servant,
E. LOCKWOOD, President.

TO HON. THOS. MCKNIGHT,
Chairman of Com. of Investigation.

In answer to the interrogatory :

1st. $100,000.

2nd. $40,000 in certificate for specie deposited in Detroit. $50,000 in notes of Jackson Co. Bank and Bank of Manchester in the State of Michigan, and $10,000 in specie and various other bank notes.

3rd. $14,030. $1,350 demand, $12,680 twelve months after date.

4th. $14,183.

5th. $39,525.78.

6th. We have certificates for $40,000 in specie deposited in Exchange office of Henry Brown & Co. in Detroit.

7th. We have no deposites in other banks.

8th. $950.

9th. $20,150, of which $19,520 are in Jackson County and Bank of Manchester, and $635 in Wisconsin and various other banks.

10th. Our discounts have been made in part with the notes of other banks and in part with notes of this Bank.

11th. About $20,000 in Jackson Co. and Bank of Manchester, about $20,000 in the notes of this and other banks; it is impossible to ascertain the precise amount.

12th. We hold no stocks in other banks or corporations.

13th. We have never declined paying for our bills when presented at our counter.

14th. We have never taken more than seven per cent. in advance on loans and discounts.

15th. No director has been indebted to this bank at any one time to the amount of $5,000.

16th. We have paid out post notes in the manner proposed, and have always received them in payment of debts due the bank without regard to maturity.

17th. We had made arrangements for $40,000 in specie, as referred to in our answer to the second question.

18th. We shall receive them in payment for any debt due the bank, which may have been created by the issues of these notes.

19th. We have no deposites, special or general, in other Banks.

E. Lockwood, Pres.
T. O. Martin, Cashier.

The committee then proceeded to examine the money in the Bank and found as follows:

Specie, $1,318.
Notes of Jackson Co. Bank, $10,000.
Notes of Manchester Bank, $10,000.
Certificate of specie, deposited in Detroit, $40,000.

The following questions were propounded to the President and Cashier by the Chairman:

1st. Do you redeem the post notes when requested? *Ans.* We redeem them by notes of other banks.
2nd. Have you ever issued notes of a less denomination than five dollars? *Ans.* We have not.

State of the funds of the Miners' Bank of Du Buque on February 3rd, 1838:

ASSETS.

Certificate of specie in Detroit	$40,000.00
Bills Discounted	40,809.05
Due Bills of Exchange	1,450.00
Due from Individuals	2,060.00
Contingent Expenses	1,010.26
Suspense Account	4,463.98
Real Estate	950.00
Foreign Bank Notes	20,155.00
Items counted as Cash	7,375.75
Specie on hand	1,318.02
	$119,592.06

LIABILITIES.

Capital Stock paid in	$100,000.00
Discount Received	864.01
Profit and Loss	1,113.00
12 months notes in Circulation	12,680.00
Notes on Demand in Circulation	1,350.00
Individual Deposites	3,585.05
	$119,592.06

(*b*) The Testimony of G. D. Dillon.

G. D. Dillon was sworn and stated that $41,147 was in the bank in specie on the 21st of November, 1837. Some money there belonged to the bank at that time and some to me. The safety fund notes on hand at that time belonged to the bank; the notes of the United States Bank belonged to the Bank and individuals.

I entered names on the bank for $101,000 worth of stock the owners assigned it to me. The ten per cent. was all paid in. The small stockholders paid in their stock, some drew it out again by notes.

Some paid the installment of forty per cent. I brought two notes of $75,000 from the East. Part of the stock was individual notes which were afterwards discounted. I showed the committee $12,000, which was on hand at that time. The Galena Bank was the bank in which we deposited our stock, part in specie and part in paper. The paper money that I had considered as belonging to the bank, but as some of the directors said that they would not consider it legal, I thought there was some they should not have. It was talked of among the directors to take stock notes. The notes that I had were payable to the President, Directors and Co. of the Miners' Bank of Du Buque. The directors have never passed upon them. The opinion of the directors was that a note payable to the bank was good for stock without endorsement. Some of the stockholders have had their stock discounted. Some of the forty per cent. was paid in specie, and some in notes of other banks. I don't remember that any individual notes were received for stock, some paid their stock, put in their notes and drew it out again. I don't remember at what time we began issuing. Don't remember with what notes we discounted with first. The people here got a large portion of Du Buque paper, for their notes, others got other bank paper. Some of the stockholders had their notes discounted and drew out the money they paid their forty per cent. with. I took into consideration that we had funds and paper amounting to $100,000, which was paid in before issuing. I have the notes originally paid in by me. I ought to own $101,000 of the stock. I put in a note and took it out again; I paid in my stock and drew it out again by a note. I sometimes discounted notes on my individual responsibility. The statement I made to the first committee is substantially correct.

After hearing the above statements and testimony of the

several individuals, the committee resolved to meet again on the first Monday in June next, and the Clerk be authorized to have the present proceedings published in all the papers of the Territory.

T. H. McKNIGHT, Ch'man.
J. R. VINEYARD.
JAMES P. COX.
E. CHILDS, Com.

Attest: JOHN FALES, Clerk.
February 10, 1838.

The editors of all papers in the Territory will please give one insertion of the above in their respective papers, and send their bills to the Secretary of the Territory for payment.[1]

(*c*) Discussion of the Report.

In this report the President and Cashier testify that the full amount of the capital had been paid, and the statement is made that the required amount of specie had been paid in; but there is no testimony bearing upon whether it was paid at the time required by the charter. The testimony shows that one-half of the money was Jackson County and Bank of Manchester notes, the charter of which is discussed later. It is stated that there is no officer or director that owes more than $5,000, the limitation of the charter; and the total amount owed by all the officers and directors is $14,183, which is about one-seventh of the total capital of the bank. The testimony in the report and the statement of the count of the Investigating committee reveals that $30,000 in Michigan notes have been put in circulation.

The appended statement of assets and liabilities only shows loans to the amount of $42,869.05, while the testimony of the President and Cashier show that $48,708.78 had been loaned.

It is shown that while post notes will be received in payment of debts due the bank regardless of maturity, they will, under other circumstances, be paid only in notes of other banks.

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T. H. McKnight, Ch'man.
J. R. Vineyard.
James P. Cox.
E. Childs, Com.

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several individuals, the committee resolved to meet again on the first Monday in June next, and the Clerk be authorized to have the present proceedings published in all the papers of the Territory.

T. H. McKnight, Ch'man.
J. R. Vineyard.
James P. Cox.
E. Childs, Com.

Attest: John Fales, Clerk.
February 10, 1838.

The editors of all papers in the Territory will please give one insertion of the above in their respective papers, and send their bills to the Secretary of the Territory for payment.[1]

(*c*) Discussion of the Report.

In this report the President and Cashier testify that the full amount of the capital had been paid, and the statement is made that the required amount of specie had been paid in; but there is no testimony bearing upon whether it was paid at the time required by the charter. The testimony shows that one-half of the money was Jackson County and Bank of Manchester notes, the charter of which is discussed later. It is stated that there is no officer or director that owes more than $5,000, the limitation of the charter; and the total amount owed by all the officers and directors is $14,183, which is about one-seventh of the total capital of the bank. The testimony in the report and the statement of the count of the Investigating committee reveals that $30,000 in Michigan notes have been put in circulation.

The appended statement of assets and liabilities only shows loans to the amount of $42,869.05, while the testimony of the President and Cashier show that $48,708.78 had been loaned.

It is shown that while post notes will be received in payment of debts due the bank regardless of maturity, they will, under other circumstances, be paid only in notes of other banks.

No other paper money than Michigan notes is revealed by the count of the money of the bank by the committee; and

[1] Iowa News, February 10, 1838.

$1,318.02 in specie with which to pay the $1,350.00 of demand notes of the bank.

The testimony of G. D. Dillon, the former cashier, while evidently badly mixed by taking it down in long hand, reveals some of the peculiarities of the early organization. This testimony showed that he had received the assignment of the subscriptions of the controlling interest of the bank's capital of which the first requirement of ten per cent. had been paid in. In one place, he states that a part of the stock was individual notes that were afterward discounted; in another, that the directors considered an unendorsed note, made payable to the bank, was good for stock; in his later statement in regard to this subject, he says: "I don't remember that any individual notes were received for stock, some paid their stock, put in their notes and drew it out again." These statements furnish at least one witness to the fact that the money was paid in for the stock and that then the stockholders borrowed the money from the banks upon their individual notes.

(*d*) The Supplementary Examination.

The committee was not satisfied with the amount of specie on hand; but they were assured by the officers of the bank that the sum of $40,000 in specie was on deposit to the order of the bank in Detroit, and that it would be in the hands of the bank at the opening of navigation. As no report could be made until that time, they adjourned to meet the first Monday in June.

The committee met at Dubuque on June 5, 1838, and addressed to the cashier the following interrogatories:[1]

First. What amount of discounts have been made since the examination in February last, and in what funds?

Answer. Thirty-eight thousand five hundred and twenty-one dollars and forty-eight cents since the examination in February, and principally in the notes of Michigan and Wisconsin Banks received in the course of our regular business.

[1] Journal of House, 1838, p. 87, et seq.

Second. Have you taken the Manchester and Jackson County Bank notes in payment of notes discounted by the bank?

Answer. We have invariably received the notes of the Jackson County and Manchester Bank, circulated by this bank, when offered in payment of discounted notes, but have redeemed such circulation principally in current Michigan and Wisconsin money.

Third. What is the present amount of your discounts?

Answer. $80,880.53.

Fourth. What is the kind of funds on hand, of what banks and what amount of each?

Answer. Of the bank notes on hand, $3,858 are in the notes of various Michigan chartered banks; $2,804 in the notes of the Bank of Wisconsin; and $576 in the notes of Illinois, Ohio, and Kentucky banks.

Fifth. What is the amount of the notes in circulation of your bank, the amount payable on demand as well as those payable after date?

Answer. $11,030; $460 payable on demand, and $10,570 payable 12 months after date.

A statement of the condition of the bank was also furnished by the cashier.

STATE OF THE MINERS' BANK OF DU BUQUE, JUNE 4, 1838.

Banking house and lot	$ 3,256.11
Real Estate	950.00
Bills Discounted	69,003.66
Contingent Expenses	2,417.79
Domestic Bills of Exchange	11,876.87
Bank of State of Missouri	500.00
Farmers' and Mechanics' Bank of Michigan	762.19
Bank of Mineral Point	318.37
Illinois Branch Bank at Galena	496.50
Suspense Account	4,453.98
Secretary of Wisconsin Territory	5,050.00
Notes of Other Banks	7,258.00
Cash items	576.68
Specie on hand	457.30
Specie in transit	20,000.00
	$127,377.45

Capital Stock	$100,000.00
Discounts received	2,068.72
Profits and Loss	1,113.00
Special Deposites	2,753.00
12 Months in circulation	10,570.00
Notes on demand in Circulation	460.00
Individual Deposits	10,412.73
	$127,377.45

The committee called attention to the fact that the bank had not "complied with its charter, nor with its promises and engagements to the committee in the month of February, and at this time have but $457.30 in specie on hand as the basis of their capital." The committee did not and could not consider specie "in transit" as worthy of being depended upon.

The committee thought the bank had "violated, misused, and abused the privileges of its charter in several instances"; that the individuals who owned the institution did not have it in their power to place it in a solvent condition, although they believed the directors desired and intended to do so; the state of the currency was such that the object could not be obtained; that there was little confidence in the bank, and from all that had been exhibited, it was the opinion of the committee that the charter of the bank should be annulled and vacated. They offered the following resolution:

Resolved, That the committee on corporations be instructed to bring in a bill to repeal the charter of the Miners' Bank of Du Buque, and so to provide in said bill for the settlement of the accounts of said bank, that the public may suffer as little as possible.

(*e*) The Memorial to the Legislature.

On the 18th of June, the memorial[1] of Francis Gehon, Peter A. Lorimer, Francis K. O'Ferrall, Robert D. Sherman, and S. D. Dickson was presented to the Legislative Assembly. This stated that on June 14, 1838, that they had personally examined the books, deposits, accounts, and exhibits of the

[1] Journal of House, 1838, p. 138, et seq.

bank, both in specie and funds of other description, and found the cashier's statement appended to the memorial to be true in every particular. They called attention to the change of ownership of the bank since its organization; and believed that under the directory, as constituted, the bank would be conducted on sound and safe banking principles and in such a way as to result advantageously to the community. They had "every confidence in the honesty and fidelity of the men" who were in the future to control the business management of the bank. They believed that the repeal of the charter or the suspension of its business would result in public injury. They expressed this opinion out of a sense of justice to the bank, the community in which they resided, and in reference to the facts and circumstances as they existed. These opinions were different from the ones they had entertained before the change had taken place in the stockholders and officers of the bank. They asked that the bank might receive the support and confidence of the Legislature.

STATE OF THE FUNDS OF THE MINERS' BANK OF DU BUQUE, JUNE 14, 1838.

Banking house and lot	$ 3,250.11
Real Estate	950.00
Bills Discounted	66,988.11
Domestic Bills of Exchange	11,876.87
Bank of the State of Missouri	500.00
Farmers' & Mechanics' Bank of Michigan	762.19
Bank of Mineral Point	318.37
Sec'y of Wisconsin Territory	5,050.00
Contingent Expenses	2,417.79
Suspense Acct	4,453.98
Cash Items	990.51
Notes of other banks	8,096.00
New York City Funds	10,000.00
Specie	10,496.81
	$126,150.74

Capital Stock	$100,000.00
Discount Received	2,100.5[illegible]
Profit and Loss	1,113.[illegible]
Special Deposites	2,600.
Ill. Branch Bank at Galena	5[illegible]
Twelve months notes in circulation	10,360.00
Notes on Demand in circulation	425.00
Individual Deposites	9,546.44
	$126,150.74

The bills discounted in February were $40,809.05 and on June 4th had risen to $69,003.66; in February out of a total of $20,155.00 in bank notes, $19,520.00 were in Jackson County and Manchester Bank bills; on June 4, the amount of bank notes of all kinds on hand were $7,258.00 which are stated to be the notes of Michigan chartered banks, Bank of Wisconsin, and a few of Illinois, Ohio and Kentucky banks, showing that the increase in bills discounted had been caused by the putting into circulation of the notes of the insolvent Jackson Co. and Manchester banks. The putting of these notes into circulation was one of the principal objections by the committee to the continuance of the charter of the bank.

Nothing was done in regard to the revocation of the charter, for the Legislative Assembly received the news that the Territory of Iowa had been created by Congress and it adjourned to meet at Belmont in the Territory of Wisconsin.

5. *The Newspaper Correspondence.*

In connection with this report, it is necessary to consider a letter[1] of E. Lockwood, President of the Miners' Bank, which is an answer to a letter written from Dubuque and published in the Miners' Free Press[2] of the issue of February 2nd, 1838, as it clears up some of the methods of the organization and conducting of the bank's business, that are not shown in the report of the Investigating Committee. The first portion of the letter is taken up with a long statement, that may without

[1] Iowa News, February 10, 1838.
[2] Col. W. S. Hamilton, editor.

the loss of meaning be summed up in these words: "the entire object of the writer seems to be to mislead the public with regard to the bank."

The writer, in the Miners' Free Press, had stated that "the first installment was paid to the commissioners, and they supposed it had been deposited in the Bank at Galena, but it has been ascertained that instead of a deposit, it was returned there to pay a loan of the principal stockholders, except about $2,000." The above statement is especially worthy of notice as it is one which is made use of in the later debates and newspaper articles against the bank. In reply to this Mr. Lockwood answers that this was not the case, at all. "The money, ($19,612.50) was deposited in the Bank at Galena, and a certificate of deposit signed by Wm. C. Bostwick, Cashier, for that amount was given to me. It was made subject to the order of the Miners' Bank of Dubuque. Eighty-seven dollars and fifty cents should be added to that amount, which had been paid towards a building lot for the Bank, and the writer in the Miners' Free Press "can explain the *reason* why the remaining *three hundred dollars* was not paid over that time."

Another one of the statements made in the Miners' Free Press and which was also used as another argument, at a later period, by the opponents of the Bank, was that many of the persons holding only a small amount of stock immediately sold out to larger stockholders, receiving for their stock the notes of Michigan Banks (Jackson County and Manchester), the officers telling them that it was the only kind of money they had to pay them with. Lockwood denies that this was true and cites that the writer and his brothers were paid for their stock $886.75 in specie, deducting their debts, the remainder "was paid in paper for which they can purchase mineral at $20 per thousand." In continuation, he asserts that the other statements of the writer contain as much truth as the one referred to above.

In reference to Col. Hamilton's editorials in the Miners' Free Press, which contain the statements that "the transactions of the institution are as corrupt as possible" and that "its

conduct has already operated to injure the character of the place," Lockwood replies by calling attention to the reports of two committees from the Legislative Assembly "raised by the influence and exertion of disappointed individuals," do not justify the statement; and that he would not have paid any attention to the communications in the Miners' Free Press if it had not been for the Colonel's endorsement of them in the editorial columns.

He thinks that the editor of the "Gazette and Advertiser" in its call for information was really seeking for the facts in order to publish them, for the information of the community, such facts as would enable them to form a correct opinion as to the solvency of the institution. That he would have answered before, if it had not been that the Committee of Investigation, appointed by the Legislative Assembly, was in the place and he knew that their proceedings would be published.

In closing this letter, Mr. Lockwood states his relations with the Bank from the time of the application for the charter down to the time of the writing, saying in a somewhat climacterial closing, "it is now, and ever has been, my earnest desire to make it a sound and solvent bank, and conscious as I am of having pursued a steady and upright course, with the laudable ambition of rendering this institution not only an honor to Du Buque, but one of the best in this Western Country."

This warfare was not confined to the newspapers of Wisconsin, but was carried into the columns of the Missouri Reporter. The Iowa News[1] takes occasion to correct some of its strictures made upon the bank, by calling the attention of the editor to the published report of the committee of investigation and suggests that, in justice to the bank, corrections should be made in its columns.

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[1] March 10, 1838.

CHAPTER III.

On the General State of the Currency.

1. *Opposition to Small Bank Bills.*

Before discussing farther the history of the Miners' Bank of Dubuque, it seems proper to call attention to some points in the financial history of this period, that is, during the years 1836—38.

The people of this Territory in the main were opposed to the circulation of bank bills, especially of a denomination less than five dollars. Early in the session of the first Legislative Assembly of Wisconsin Territory, there was introduced in the House a bill[1] to continue in force an act of the Territory of Michigan to prevent the circulation of bills of a less denomination than five dollars. This bill by the suspension of the rules was rushed through the House; but on account of unfavorable circumstances did not pass the Council; a similar law was enacted later[2] in the Territory of Wisconsin.

2. *Scarcity of Silver.*

The Iowa News early[3] in January, 1837, says that as yet we can not complain to a very great extent as to the exceeding scarcity of paper money in this section of the country, yet the want of silver is unprecedented. By some this is ascribed to the influence of the Treasury Circular,[4] but by others to the illegal circulation of notes of a less denomination than five dollars; if these notes were refused by everyone, in six months time there would be plenty of silver in circulation. In July a

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1 Nov. 16, 1836.
2 Laws of the Territory of Wisconsin, 1839.
3 January 18, 1837.
4 July 11, 1836.

notice of the illegal issue by the Bank of Wisconsin of these notes of a less denomination than five dollars is copied from the Green Bay Democrat.

3. *Stay of Execution.*

In his inaugural message to the Legislative Assembly of the Territory of Wisconsin delivered on Nov. 7, 1837, the Governor (Henry Dodge) urged[1] that a bill be passed allowing the Stay of Executions for one year. In closing his discussion of this topic of his message he says: "Debts have been created, when bank notes of different banks were in general circulation in this Territory, by many of the most industrious and enterprising citizens who no doubt believed they would be able promptly to meet their engagements." The bill failed to pass at this session although it was taken up for consideration several times.

4. *Public Opinion in Regard to Banks.*

The opinions of the people at this period in reference to banks seems to have been divided, irrespective of the lines of the party politics, into three classes: Those opposed to the granting of charters to private corporations for banking purposes, but in favor of a well-guarded system of free banks based upon sound financial principles; those not entirely in favor of the prevailing bank system, but who believed that carefully drawn charters should be granted to furnish a sound currency by the means of responsible banks located at home; those utterly opposed to any kind of paper currency and who wished for no other circulating medium than silver and gold. A typical statement from among the many found in the publications of this time is that of a writer under the pseudonym of "Interloper."[2] He felt satisfied from the various signs of the times that a new era would soon commence in this country in relation to banking; and felt that public sentiment was rapidly changing on this

[1] See Inaugural Message, p. 3.

[2] Published by request in Iowa News of January 18, 1837. First published in Milwaukee Advertiser.

subject, and that it would only be a short time until banking monopolies, "begotten by avarice, born in corruption and matured by fraud, which now throng the country, would be swept into oblivion; and a free banking system based on *real capital* and *real responsibility* will fill the void." In this communication he stated that remonstrances against "*our bank* bill" had been generally signed by the business men and citizens, petitioning Congress to refuse its approval of it; and if this should be done, it would render some aid in producing "this desirable result in our young and growing Territory." From this class and from the third class mentioned above, there were very many signers to the shower of remonstrances[1] poured in upon Congress against its approval of the charter of the Miners' Bank of Dubuque, the Bank of Milwaukee and the Bank of Mineral Point.

The results, in part, of the second class is shown in the attempts to pass other and more carefully guarded charters such as that of the bill to incorporate the Iowa Bank in the First Legislative Assembly, 1836; and the bills to incorporate The Bank of Burlington and The Bank of Racine in 1837; and which produced the more conservative charter[2] of The Bank of Wisconsin, located at Prairie Du Chien, which required one-sixth of the subscriptions to be paid in specie, and provided that the corporation could not contract debts to a greater amount than twice the amount of the actually paid up capital stock; the most prominent clause of all was that in regard to the "safety fund."

The third class might have chosen for their spokesman John H. Baker, candidate to fill vacancy in the House of Representatives, who closes[3] his "Card to the Voters" with the following sentence: "I am opposed to the whole banking system, believing that we have no use for any better money than gold and silver."

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1 Presented to Congress January 1, 1837.
2 Approved January 17, 1838.
3 Iowa News, July 1, 1837.

5. *Character of the Paper Money in Circulation.*

In the early portion of 1838, meetings of the business men and citizens were held in the different towns to consider the state of the currency, and to fix the rate of discount at which the so-called "good bills" would be received in commercial transactions. The results of the meetings held at Galena, although without the Territory but immediately adjoining it, may be taken as an example. The first public meeting was held on January 29, 1838, and a committee was appointed to report about two weeks later the discounts at which the various bank bills would be received in trade. The rates of discount were: "At ten per cent., the notes of the Farmers' & Mechanics' Bank of Detroit, State Bank of Michigan, Farmers' and Mechanics' of St. Joseph; at fifteen per cent., the notes of the Bank of River Raisin, Erie & Kalamazoo, Clinton, Ypsilanti, Calhoun, St. Clair, Tecumseh, Washtenaw, Constantine, Macomb, Green Bay, Lake Erie & River Raisin R. R. Co., all other banks of Michigan and Wisconsin twenty-five per cent.; and the notes of *all other Banks* not receivable in the Galena Branch of the Illinois State Bank at ten per cent. discount."[1]

Not only was this portion of the Territory deluged at this time with innumerable counterfeits of various banks, including a large issue of counterfeits on the State Bank of Indiana, but also with a countless number of forged notes and notes of banks with no legal existence. An example of this last class even sprang into existence within the boundaries of this Territory. One sentence, in one of the many notices,[2] in regard to the issues of this bank, The Prairie Du Chien Ferry Co. Bank, conveys to the modern reader a vivid idea of one of the queer financial views of this time. The sentence referred to is: "We have seen a bill purporting to be on the 'Prairie Du Chien Ferry Co. Bank,' but we do not know

[1] Iowa News, February 17, 1838.

[2] Iowa News, March 31, 1838.

whether the persons[1] who sign these bills as President and Cashier are men of property or not; yet, the safest plan will be to refuse them."

A newspaper advertisement of one of the merchants of Dubuque, inserted in the Iowa News of April 14, 1838, shows some of the peculiarities of the currency of the time, and the light in which it was viewed, at least by one merchant:

NOTICE.

Tis better from evil well forseen to run,
Than perish in the danger we may shun.

My specie traps and Benton bullets being exhausted, I became overpowered with 'Wild Cat,' and in my own defense have shut the doors of my menagerie.

Now that I have got the animal conquered, those of my old friends and customers who are in debt to me will please favor me with a few more specimens of the breed. In the future, however, I will prefer the Sucker, Puke or Hoosier *Tame Cat*, and occasionally one of the old domestic species of Buck-eye or Corncracker. In a few days my doors will be thrown open to public patronage, but I will never again entrust my person or property to those crazy animalculae imported over the mountains or lakes. The far fetched I leave to ladies.

CHARLES CORKERY.

April 14, 1838.

In April, 1838, the circulation of the northern portion of Wisconsin Territory was made up almost wholly of the notes of the banks organized under the general banking law of Michigan. The Bank Commissioners, who had been appointed, were diligent in the performance of their duties and had reported[2] among the long list of the banks that had forfeited all claims to public confidence the Bank of Manchester and Jackson County Bank. The notes of these two banks had constituted the principal portion of the circulation of Dubuque County up to this time.

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[1] "A bank was started this year (1837) called the Prairie Du Chien Ferry Co. Bank. Handsome bills were issued. George W. Pine, President. H. W. Savage, Cashier. It did not circulate well here, as it had no charter. It did less damage than most of the wild cat institutions of that day." P. 12, Annals of Prairie Du Chien, by S. Burrie.

[2] Senate Exec. Doc. No. 38, 52d Cong. 2d Session, p. 34.

The Miners' Bank of Dubuque had put a large amount of these notes in circulation. Of these notes given out to its customers it had been redeeming some with current notes of banks, and receiving some on debts due the bank. By these two methods it had already redeemed the larger part of this depreciated money, with which it had been largely instrumental in flooding the channels of trade.

St. Louis bankers and merchants, at this time, refused all kinds of bank notes except those of Illinois, and the general tenor of public opinion was that even this bank would not long retain its credit. For it had commenced operations in a manner unsatisfactory to many of the people, and had issued notes to a very large amount, and by means of legislation, that many deemed corrupt, it had been able to suspend specie payment for eighteen months. And the general opinion seemed to be that notwithstanding the interest on this large amount of "Suspended specie payment notes," that it was probable that it would yet be forced into the footsteps of the banks of Michigan.

By the middle of June,[1] the Mineral Point Bank gave notice that it would take the notes of the Bank of Milwaukee, as a specie paying bank; and by this time the general opinion seems to have crystalized into such a shape as to lead the people to believe that the banks of Wisconsin Territory were upon as sound a basis as the State Bank of Illinois. Of this opinion they were to be disabused, at least in part, a little later.

According to the Burlington correspondent of the Iowa News,[2] the people of that city were still heaping maledictions upon the unfortunate head of the Secretary of the Territory because he had at the close of the last session of the Legislative Assembly paid out a large amount of these Jackson County and Manchester Bank bills. Over seven thousand dollars of them had been paid to residents of the city, a large portion of that amount was still there with the likelihood of remaining permanently unless he would redeem them.

[1] Iowa News, June 16, 1838.
[2] Ibid.

6. *The Governor's Recommendation.*

From April to June of this year, there was a falling off in the amount of currency in circulation and its character had deteriorated more rapidly than the fall in volume. So serious in character had the financial condition become that the Governor in his annual message[1] to the Legislative Assembly said: "Should the bill now depending before Congress of the United States for the establishment of two land offices West of the Mississippi River, become a law, and should the lands be opened for sale under the proclamation of the President of the United States during the present year, many of our citizens who might be entitled to purchase public lands (should the right of pre-emption be extended to them) would not be prepared to pay for their homes. I respectfully and earnestly recommend to the Legislative Assembly the justice and propriety of memorializing the President of the United States on this subject, asking him to defer the sale of public lands within this Territory, for one year. The present state of the currency and the difficulty of procuring land office money would justify the indulgence proposed for the benefit of this meritorious class of our citizens who have a right to expect justice and the patronage of the government will be extended to them."

[1] June 11, 1838.

CHAPTER IV.

Banking in Iowa From 1838 to 1841.

1. *The Third Investigation.*

Early in the session of the first Legislative Assembly of the Territory of Iowa, November 28th, 1838, Stephen Hempstead[1] offered a Joint Resolution[2] in the Council to investigate the affairs of the Miners' Bank of Dubuque. The Resolution was passed by the Council without amendment on the same day, and was read the first time in the House; on the following day it was concurred in by the House.

The committee consisted of three members, one from the Council and two from the House. Warner Lewis was appointed by the Council; and Nowlin and Hall by the House. Hall was one of the Representatives from the district consisting of Jackson, Dubuque and Clayton Counties.

The committee was authorized by this resolution to proceed immediately to Dubuque, and investigate the affairs of the Miners' Bank. They were to examine all books, papers, accounts and certificates; count the gold, silver and bankable paper in the vault; determine the amount of deposits; and examine "into every act or acts of said bank which relates or may relate, in any manner, to the fiscal management of the same;" to examine under oath the President, Cashier, or any other officer upon any acts that related to the management of the bank. In order to punish any of the witnesses for perjury, if it should be committed, a provision new to resolutions appointing "committees of investigations" was introduced: "If the said President, Cashier or other officer, to whom oath shall be administered,..... shall swear or affirm falsely, in

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[1] Governor of Iowa, 1854.
[2] Laws of the Territory of Iowa, 1838-39, pp. 515-16.

answer to any interrogatory propounded by said committee, or to any affidavit required by said committee, such President, Cashier, or other officer, shall be deemed to have committed the crime of perjury and shall be punished as the laws of this Territory require." It could not be claimed that the officers of the bank had sworn falsely in making their report to this investigating committee and that there was no law to punish them.

The committee had the power "to send for persons and papers" and examine the persons under oath as to their knowledge of the management of the bank. The committee did not take advantage of the first provision in the resolution, in making the investigation.

As soon as possible after the investigation, they were to make a full and complete report of the results of their examination to the Council and House of Representatives.

The committee proceeded immediately to Dubuque and on the 6th of December, 1838, submitted the following list of questions to T. O. Martin, Cashier of the Miners' Bank of Dubuque:

1st. What is the amount of deposits on hand?
2nd. What is the amount of profit on hand?
3rd. What is the amount of bills in circulation?
4th. What is the amount of debts due from the directors and stockholders?
5th. What is the amount due from other persons or corporations?
6th. What is the amount of specie in bank and actually belonging to the bank?
7th. What amount of bills of other banks have you on hand, actually belonging to the bank?
8th. What is the amount of your deposites in other banks; if any, what banks are they?
9th. What amount of real estate is owned by the bank?
10th. What is the amount of other property?
11th. What is the amount of capital stock actually paid in?
12th. What is the character of the issues of the bank; are they post notes, or payable on demand, and what is the amount of each?

13th. Are any other banks or corporations indebted to the Miners' Bank? if any, what, and what amount?

14th. What is the amount of debts that the Miners' Bank owes at this time, whether by bond, bill, note, post note, or other contract?

15th. Has the Miners' Bank ever taken more than seven per cent. upon its loans?

16th. What amount of capital stock was paid in, before the bank commenced its operations?

17th. What is the character of your deposites, are they general or special?"

In answer to the interrogatories of the committee, the Cashier of the bank made the following statement:

State of the funds of the Miners' Bank of Du Buque, Dec. 7th, 1838:

Capital Stock	$100,000.00
Profits on Hand	3,935.61
Circulation	10,990.00
Post Notes	5,035.00
Individual Deposites	3,686.39
	$123,647.00

Real Estate	$ 4,206.11
Stocks	1,000.00
Bills Discounted	71,597.72
Contingent Expenses	6,244.13
Profit and Loss	4,363.98
F. & M. Bank of Michigan	762.19
Exchange Account	6,344.00
Territory of Wisconsin	5,050.00
St. Louis Funds	1,678.00
Notes of other Banks	18,874.00
Cash items	493.87
Gold and Silver	3,033.00
	$123,647.00

MINERS' BANK, DU BUQUE, December 7, 1838.

Gentlemen:—I hand above, a statement of the affairs of this bank, as requested by you in person yesterday. I also annex

answers to such of your questions, as are not replied to by the statement itself. I am very respectfully,

Your obedient servant,

T. O. MARTIN, Cashier.

Warner Lewis and others, committee of investigation.

For answers to No. 1, 2 and 3, see statement.

To No. 4, I answer fourteen thousand, four hundred and fifty-two 76-100 dollars. From 5—14, inclusive, see statement.

To No. 15, I answer, the Miners' Bank has never knowingly taken more than seven per cent. on loans.

To No. 16, fifty per cent. of the capital stock, was required to be paid in before the bank could legally commence operations.

To No. 17, our deposits are generally of a special character, and made to apply on notes not yet due.

T. O. Martin, Esq., Cashier of the Miners' Bank of Du Buque, being duly sworn by the chairman of the committee of investigation, says: "that the foregoing answers to the interrogatories propounded, and the expose of the condition of the bank, is true and correct, according to the best of his knowledge and belief. T. O. MARTIN, Cashier.

Subscribed to and sworn to before me,

WARNER LEWIS, Chairman of Committee.

Which statement your committee carefully examined and compared with the books and vaults of the institution, and is, in their opinion, a true exposition of the condition of the bank, from which it appears that the amount of *cash on hand* nearly doubled the amount of the liabilities of the bank.

Your committee would further state that every facility was afforded them for making the investigation, through the politeness of T. O. Martin, Esq., Cashier, and upon a full and fair investigation of its liabilities and resources, your committee are constrained to believe that the Miners' Bank of Du Buque, is in a safe and solvent condition.

WARNER LEWIS,
HARDIN NOWLIN,
JAMES HALL.

NOTE—This Report was concurred in by both Houses; Journal of House, p. 132.

2. *The Results of the Investigation.*

The investigation called for by the appointment of this committee evidently originated in the local prejudices against the Miners' Bank.

It was the third time that the local bickerings had brought a committee to make an investigation of its affairs.

The report of the Investigating Committee does not throw any light upon some of the disputed points of its organization. The old question of how much of the stock was paid in before the bank commenced operations yet remained unanswered. The reply of the Cashier to the question was evasive, as shown by the language of his answer, that: "fifty per cent. of the capital stock was required to be paid in before the bank could legally commence operations."

The "Bills Discounted" account had risen to $71,597.72, over one-fifth of which had been borrowed by the officers and directors of the bank; in the former report only about one-seventh of the loans were made to the directors.

The character of the circulation had changed, although the total still remained small. The demand notes during the past year had been issued to more than twice the amount of the post notes. The amount of specie for redemption of circulation was very low; less than one dollar of specie for every five of bills issued. The individual deposits still remained small and were of a special character.

This report gave entire satisfaction to the members of the Legislature, and no further action was taken in regard to the condition of the bank until the beginning of the Legislative Assembly of 1841, when other and new factors entered into the discussion of its affairs.

3. *The Proposed Bank of Charleston.*

A petition[1] of the citizens of Jackson County, praying for the establishment of a bank at that place was presented to the

[1] Journal of House, 1839, p. 140. Original in Sec'y State's office, No. 2212, B. 381.

House of Representatives on December 27, 1838. It was signed by fifty-three petitioners. The petition stated that in order to increase the ordinary means of transacting business in a country destitute of capital, that some measures should be taken to increase the advantages. The bank was to be located in the village of Charleston, in Jackson County, and it was asked to have the rights and privileges incorporated in the charter that were generally granted to banks; and that the bank might commence business with a capital not exceeding fifty thousand dollars, which could at the will of the stockholders be increased to two hundred thousand dollars. It was referred to the Committee on Incorporations and was never heard of again during that session.

4. *Condition of the Miners' Bank in 1841.*

In an Executive Document[1] of the 26th Congress there is found an interesting letter written by Governor Lucas of Iowa as an answer to the inquiries of the Secretary of the Treasury in regard to the forwarding of a report on the condition of the banks of Iowa.

The Governor wrote that a statement of the condition of the one bank in Iowa was not required by law; and that the latest information that he could furnish him with was a copy of the report of the Legislative Committee made in 1838, and a letter written by Mr. Bainbridge, (President of the Legislative Council). In answer to the Secretary's questions Mr. Bainbridge, under the date of December 14, 1840, wrote that personally he knew nothing of the condition of the Miners' Bank; but in October, the Cashier had informed him that the circulation was less than $40,000. From other sources, in which he had the fullest confidence, it had been stated to him that there was more than $45,000 of specie in its vaults, and he had no idea of the amount of notes. It was his personal belief that the bank had never failed to redeem its notes in specie. And in conclusion he stated that "the people in the

[1] Exec. Doc. 111, 26th Cong. 2nd Sess., Vol. IV, p. 1416.

Northern part of the Territory have the utmost confidence in the institution." This meagre statement is all that we know of its condition in the latter part of 1840.

5. *The Loan of the Miners' Bank to the Territory of Iowa.*

On January 15, 1841, there was approved an "Act[1] authorizing a Loan of money to be expended on the Capitol." On account of the financial condition of the Territorial Treasury, it became necessary to secure a loan of money to cover the expenses attendant upon the continuance of the work of erecting the Capitol. The Territorial Agent, Jesse Williams, was authorized to make such a loan to an amount not exceeding twenty thousand dollars, if it could be made by pledging the faith of the unsold lots in Iowa City. In accordance with the provisions of this act, the Territorial Agent secured a loan of five thousand dollars on June 28th, 1841, due in eighteen months after date, payable at the Bank of America in New York City. The interest to be paid quarterly, at the State Bank of Missouri, in the city of St. Louis. On September 30th of the same year another loan of only five hundred dollars was made, payable at the State Bank of Missouri nine months after date. These loans were negotiated at the rate of seven per cent. per annum from the Miners' Bank. The act was repealed by the Legislative Assembly of 1841-42.

6. *The Panic of 1837 and General Suspension of Specie Payments.*

On the 10th and 11th of May, 1837, the New York banks and the Natchez, Miss., banks suspended specie payments, and as fast as the news spread to the cities, East, West, North and South, the other banks of the United States suspended also. In this general suspension of specie payments the banks of New England were included, as they were not in the suspension of 1824. All the New York banks, including the deposit banks, continued this suspension of specie payments

[1] Chapter 72, Laws of the Territory of Iowa, 1841.

until May 10th, 1838, without any violation of their charters. In August, 1838, the banks of Philadelphia resumed specie payments; and by the 1st of January, 1839, there was at least a nominal resumption of specie payments throughout the Union. From 1837 to 1841 there was great distress among the people of the country, especially in the well-settled Eastern states. Prices were abnormally high, and inflated land values in the Western states and territories collapsed as the currency depreciated. Although business throughout the country was revived slightly in 1838-9, the weak and crippled condition of the banks in general made them easy victims to the so-called "after panic of 1839." The immediate cause of this after panic was the failure of the United States Bank of Pennsylvania, immediately followed by the suspension of all the banks of Philadelphia. By the end of the year 1839 out of 957 banks and branches in the United States 343 of these had suspended [1] specie payments entirely, 62 in part, and 56 had failed; during that year only 48 of the suspended banks had resumed specie payments. The State Bank of Missouri did not suspend specie payments on its own notes, but as it traded on the notes of other Western banks, it became an issuer of inconvertible paper money. The banks of Rhode Island soon resumed specie payments. The banks of South Carolina resumed specie payments in July, 1840, and all the other banks to the South and West of New York, with the exception of East Jersey and a few scattered banks of different places continued to refuse specie on demand. On January 15th, 1841, the banks of Philadelphia resumed specie payments and sustained them for about twenty days. They then for the *fourth* time suspended specie payments and did not resume again until the 10th of March, 1842.

In November, 1839, the State Bank of Indiana suspended specie payments, but left it to the discretion of the branches as to whether they should suspend specie payments or not. During the year 1840, ten of the branches did not uniformly

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[1] Report of Secretary of Treasury, January 8, 1840.

pay specie upon their notes and it is probable that the other three branches would have refused to pay specie if their notes had been presented in any large amounts by people from without the state. This bank resumed specie payments in accordance with an act of the Legislature on June 15th, 1842, and never defaulted again.

By an act of special session of the Legislature of Illinois, the State Bank of Illinois was authorized on the 10th of July, 1837, to suspend specie payments without forfeiture of its charter. This was to continue in force until the next special or general session of the Legislature. It was necessary that certain provisions should be followed by the banks in order that this suspension should be legalized. They were to make no dividends before resuming specie payments; nor to dispose of any specie except for change and for no sums over five dollars; make monthly returns to the Governor; not increase its circulation beyond the amount of the capital stock actually paid in; receive and pay out any funds belonging to the state free of charge and to allow such of its debtors as were citizens or residents of the state of Illinois to pay their debts in installments of 10 per cent., upon their executing new notes with approved security. They were to surrender their charter if any of these conditions were violated. Before December, 1838, they had all resumed specie payments. In 1839 the suspension of specie payment was again legalized against the Governor's recommendation to the contrary. The conditions of suspension were the same as those of 1837. In January, 1841, the condition of suspension of specie payment was legalized until January 1st, 1843. But by that time the affairs of the bank had reached such a state that it was necessary to pass a law to close up its business.

In 1842 the condition of affairs was such that there were 32,899 applications for the benefit of the bankrupt act in the United States, excluding North Carolina, Louisiana, Western Mississippi and the Territory of Iowa. Of these 34 were discharged.

The condition of the people of the United States subsequent

to the panic of 1837 and 1839 was deplorable. The North American Review for January, 1844, fully described their condition:

In some of the new states, it was difficult even for the wealthy to obtain money for the daily uses of life. We have heard of farmers, owning large and well-stocked farms, who could hardly get money enough to pay postage on a letter. They had scarcely any currency, and most of that which they had was bad. In the commercial states, matters were but little better. Failures were almost innumerable. Trade had fallen off, and, when prosecuted, was hazardous. A deep gloom settled upon men's minds. * * * * The physical means of making payment of their debts were wanting in some states, for there was no money to be had.

The Standard[1] of February 19, 1840, in an article on "Tinkering with the Currency" gives a graphic description of the general condition of the Territory as viewed by a Whig newspaper: "This Territory has not passed unscathed through the disastrous revulsions which have followed so close upon the track of the Administration upon the country. You were not affected by the evils following from the 'Tinkering with the Currency' as soon as the older sections of the country, but you felt its withering blight none the less forcibly. It lost none of its power from the distance, which intervenes between our beautiful Territory and the commercial emporiums of our nation. You have felt the effects in the scarcity of money and the low price of the productions of the prolific soil of our Territory, and you have seen in the 'Tinkering with the Currency' the effects in the check which emigration has received."

The condition of the farmers of Iowa in part is told in a communication in the Iowa Standard of March 3, 1840: "We are many of us in debt. We came here some two, some six years ago to settle upon land that was not in the market and was not expected to be for some time after we were settled. By the opening of the Government Land offices for the sale of the land we are now obliged to borrow money at from 25

[1] Of Bloomington, Iowa.

per cent. to 75 per cent., and pledge our homes for the payment of these debts. The prices of all products are low and it is almost an impossibility to sell enough of them to pay the taxes upon our property."

7. *Suspension of Specie Payment by the Miners' Bank.*

The Miners' Bank of Dubuque formally suspended specie payments on March 29, 1841, by the official adoption by the directors of a preamble and series of resolutions.[1] These state the condition of the bank and the reasons for its suspension. From the resolutions it is found that it was the intention of the bank to have continued specie payments; and that it would have been "entirely convenient" for the bank to have redeemed the amount of outstanding notes that would have returned to it in the course of its ordinary business. But the course pursued by a large banking firm in St. Louis forbade its carrying out its original intentions. While discrediting the notes of the Miners' Bank in St. Louis this firm purchased the notes in large quantities and demanded specie for them, using it for "speculation purposes." The directors deemed this an advantage to a few persons but a detriment to the bill holders at large, as well as making it an expensive operation for the bank to maintain the resumption of its notes in specie. Therefore, out of regard for its own, as well as its creditors' interests, the bank declined to pay specie upon its notes, "except in small amounts as shall be required for the convenience of transacting business." The directors stated that there was "no well-founded cause for alarm upon the part of the bill-holders, as regards the ultimate ability and disposition of this bank to redeem its liabilities." In the resolutions they call attention to the statement of the condition of the bank which has been prepared "with a particular regard to the accuracy in setting forth the amount of Liabilities and Assets of this bank." They promise to publish a quarterly statement of the bank's condition, during the suspension of specie payments, for the

[1] Iowa Standard, April 16, 1841.

satisfaction of the community and the bill-holders. The statement of the condition of the bank gives the following items:

LIABILITIES:

Capital Stock	$100,000.00
Specie deposited to apply on notes Discounted	3,550.00
Individual Deposites	6,099.00
Discounts Received	1,764.48
Notes in Circulation	97,005.00
Total	$208,418.48

ASSETS:

Real Estate	$ 14,658.14
Bills Discounted	80,314.36
Bills of Exchange and Bills Discounted Payable at St. Louis	30,969.00
Due from other Banks	1,504.84
Due from St. Louis Agency	22,485.14
CASH—	
Notes of other banks, current	6,880.00
Cash Items	395.00
Certificate for Deposit of Specie in St. Louis	7,500.00
Notes of Bank of Missouri	3,660.00
Gold and Silver on Hand	40,051.99
	$208,356.99

March 29, 1841.

T. O. MARTIN, Cashier.

CHAPTER V.

Banking in Iowa From 1841 to 1844.

1. *The Attitude of the Fourth Legislative Assembly.*

At this time the Democratic party in many of the different states of the Union was taking a decided stand in favor of forcing all the banks into a speedy resumption of specie payments. There was a general tendency to make those that could, resume specie payments and to force those that did not have the ability to resume, to the wall. There was a strong feeling in the party that the "rotten concerns must go by the board" and there was a seemingly concerted action to carry out this thought.

So the Miners' Bank again became a topic of discussion in the Legislative Assembly during the session[1] of 1841-42, appearing in the form of Joint Resolutions and Bills in the Council and the House.

In the Council two Joint Resolutions, an Act, and a Resolution originated. Leffler of Des Moines County on January 20, 1842, introduced a Joint Resolution[2] authorizing an investigation by a joint committee of the Miners' Bank of Dubuque, which was passed on the same day and referred[3] to the House. Springer introduced on February 2, 1842, a resolution requiring the Cashier of the Miners' Bank of Dubuque to furnish to the Council a sworn statement of its affairs. This was adopted. Mr. Bainbridge[4] presented the statement of the Cashier.

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1 Continued from December 6, 1841, to February 18, 1842.
2 Journal of Council, 4th Legislative Assembly, p. 100.
3 Ibid, p. 135.
4 Ibid, p. 137.

Statement of the affairs of the Miners' Bank of Dubuque, January 1, 1842:

LIABILITIES:

Capital Stock	$100,000.00
Discounts Received	880.27
Due Depositors	5,094.25
Special Deposites	3,069.60
Notes on Special Deposite with other Banking Institutions	46,000.00
Bank Notes in Circulation	167,030.00
	$322,074.17

ASSETS:

Real Estate	$ 14,973.14
Personal Property	5,682.03
Stocks	8,000.00
Loans and Discounts	151,976.94
Bills of Exchange	11,588.75
Due from other Banking Institutions	53,763.65
Notes of other Banks (chiefly Illinois)	32,812
Gold, Silver and Notes of State Bank of Missouri	43,277.66
	$322,074.17

I hereby certify that the foregoing is a correct statement of the affairs of the Miners' Bank of Dubuque, according to the best of my knowledge and belief.

T. O. MARTIN, Cashier.

Sworn and subscribed before me, this first day of February, 1842. JOHN HAWKINS, Justice of Peace.

This was referred to the committee of the whole. The Council then resumed its sitting as a committee of the whole [1] on the Joint Resolution (C. F. No. 95) requiring the Miners' Bank of Dubuque to resume specie payments. No day being named for the resumption, Mr. Bainbridge of Dubuque moved that the blank be filled with August 1st. This date was adopted. The resolution was then reported to the Council. Mr. Green of Linn moved to insert March 1st instead of the later date;

[1] Journal of Council, 4th Legislative Assembly, p. 137.

and from this motion sprang up one of the most spirited debates of this session of the Legislative Assembly. By this debate the Miners' Bank of Dubuque was introduced into the arena of party politics.

In all of the different Legislative Assemblies preceding this, the members had been elected upon purely local considerations, the questions of party not affecting the results at all. But a large portion of this particular Assembly had been elected upon the basis of party principles, the rest upon local considerations. Not only in the Council, but also in the House, during this session the bank was attacked, not because of any of the characteristics of this particular bank, but because it was a bank. The Democratic members as a whole based their speeches in opposition to it upon the principles which had generally governed the banking system. It was written of it at at this time: "Her notes form a very inconsiderable portion[1] of the circulating medium of the Territory." From this time on the bank was not only to be bruised for its own misdeeds, but was to be ground between the millstones of party politics. From this time on, until the introduction of the National Banking System and the doing away with the State Bank of Iowa, the party lines were to be drawn, more or less tightly, always enough to be felt. There was no ceasing by the most radical wings of either the Whig, the Democratic, or the Republican party.

These conditions must be borne in mind in judging the future action of the people in their consideration of the banking system. It will not be the system alone that will be considered, but there will always be behind it the thought of the system as a banking system, irrespective of the principles governing it.

(*a*) Position of Democrats in the Council.

Bailey of Van Buren spoke[2] in opposition to the amendment and denounced all of them as "swindling machines, festering with corruption." Continuing in his speech, he adverts to the

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[1] Capital Reporter, December 23, 1841.

[2] Iowa Standard, February 5, 1842.

late bank riots[1] and claims that the 1st of August, set as the time of resumption by most of the Western banks, will see the most of them go down in a general crash. In the latter portion of his speech, he said: "If the Legislature should fail, or refuse to act promptly in this matter, that the people of Iowa would be justified in taking the matter into their own hands and taking summary vengeance on the bank."

Hall of Van Buren replied to the somewhat demagogic utterances of his colleague and was opposed to the Council doing anything, but if it must do something, he was in favor of serving it the same as other Western banks and defer the resumption of specie payments until the 1st of August.[2]

Bainbridge of Dubuque was opposed to mobs and hoped to never see one in Iowa; but, if one occurred, it was his wish that the people would be hung.[3] He re-asserted that up to this time there was no dissatisfaction with or "excitement" against the bank in the community where it was located; that "the great body of the people had been benefitted by and were perfectly satisfied with the operations of the bank." He called the attention of the Council to the fact that it had paid specie longer than any other Western institution, and only suspended in self-defense. That since its general suspension it had paid out thousands of dollars in specie to settlers who had needed it to enter their lands, and had never refused it for that purpose. He affirmed that the statement of the cashier showed its solvency; and that if it were compelled to resume and maintain specie payments, the result of it would be that the banks of neighboring states, where suspension was legalized, would drain it of its specie, while their own notes might be in its vaults and would not be available until general resumption. This would be of benefit to the bankers of St. Louis, but the poor farmers and mechanics of Iowa would have to sacrifice their notes or wait twelve months for the settling of the affairs of the bank. In closing he said that the

1 In the cities of the Eastern States.

2 Iowa Standard, February 5, 1842.

3 Ibid.

"Democracy of some gentleman demanded the abolition of all banking institutions, but his did not carry him so far."

Green of Linn was of the belief that the whole system was of the tendency to deprive the laborer of the product of his toil, and give it to some rich broker or speculator. He called attention to the common custom of contractors buying up the depreciated notes of Ohio and Michigan at enormous discounts and paying their hands with them at their face value. The people everywhere were redressing the wrongs which they were suffering from banks.[1] For himself he knew nothing of this bank or its operations, he was simply speaking of the principles governing the system. It was only a matter of expediency that he would vote for March 1st. A very incendiary portion of this speech, as reported, not quoted, led to a denial of it by Green in the Capital Reporter and an affirmation of the correctness of it in the Standard by the editor and a correspondent.

Parker of Scott was opposed[2] to the Legislature taking any action upon it; if there was any question of the bank having forfeited its charter, it should be tried before the "proper tribunal." He felt that his constituents did not have any interest in the concerns of the bank. Personally, he would not vote to deprive any creditor of his just dues and was opposed to all form of stay laws.

The committee of the whole now reported[3] it back to the Council with the blank filled with August 1st. Green following his former course moved to change August 1st to March 1st.

This caused Leffler to give a clearly defined statement of his position.[4] From the standpoint of wrong, it was as unjust to insert March 1st as August 1st. The certain effect of passing it as amended March 1st would be to give the gold to the St. Louis brokers and leave the bank without any specie to redeem its notes in the Territory. This would be

1 Iowa Standard, February 5, 1842.
2 Ibid.
3 Journal of Council, p. 137.
4 Iowa Standard, February 5, 1842.

an injustice to the people living in the river counties who were interested in the action of the Council. He did not wish to legislate for the bank, but for the people, and would not permit himself to be swayed by prejudice, but intended to do justice to all parties; and thought August 1st to be for the best interests of the people.

Hastings of Muscatine was opposed to giving a day to the bank and personally believed in taking the democratic stand in opposition to banks. At this time the expression "bank suspension" had simply become a "trite phrase" behind which was the hiding place of insolvency and fraud.

The motion to insert the 1st of March was lost; and the resolution was referred to the Committee on Incorporations[1] which consisted of Green, Bailey and Kirkpatrick, to which Bainbridge and Wallace were added.

On the following morning the Committee on Incorporations reported a bill[2] (C. F. No. 103) as a substitute for the Joint Resolution (C. F. No. 95). This bill required that the bank not only resume but continue specie payments on and from March 1st, and made provisions for the appointment of receivers to close up its affairs if it failed to do so. It was read a first and second time and then considered in the committee of the whole. During its consideration in the committee of the whole, but one amendment was made—the changing of the time of resumption to August 1st.

(*b*) Position of Whigs in the Council.

As the debate upon the previous day had unmasked the Democratic position in reference to banks, the debate of this day was to develop the principles upon which the Whigs were to rally in support of the bank in the future contests about it and the principles of a banking system. Bainbridge of Dubuque regretted that he had not been permitted to meet with the committee which had "concocted and reported" the

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[1] Journal of Council, p. 138.

[2] Iowa Standard, February 5, 1842.

bill as "he believed that he could have convinced them that the Legislature had no right to pass such a law." The question of the propriety of repealing belonged to the Judiciary,[1] and the Legislature had no right to act until the trial and conviction of fraud on the part of the bank. The Legislature in granting this charter had entered into a contract with the corporation, as was witnessed by the decisions of the Supreme Court of the United States. One party to a contract could not break it at his pleasure. He then quoted from 2 Kent 305; 7 Cranch 164; and 9 Cranch 43 in support of the application of this principle to the principles he had laid down.

Kirkpatrick of Jackson followed with a written speech filled to repletion with party politics, and blows at the Democracy of those that were supporting the bank[2] at this time. He stated that when the cloak of hypocrisy was thrown off from the bank defenders, there was always discovered a mass of corruption and that always emitted the blue light of Federalism. He represented a part of the bank district but that "neither life nor death, nor angels, nor principalities, nor powers, nor things present, nor things to come,..... would ever be able to separate him from the good principles of old-fashioned Democracy," or cause him to "budge an inch" in voting upon this vital question. One facetious reporter has chronicled that here the speaker "Got mixed."

Hastings of Muscatine stated that he was in favor of immediate repeal and boldly avowed that it was "his object to cripple the bank and do her all the injury in his power."

Here it was again amended so that resumption should take place on March 4th.[3]

Coop of Jefferson introduced an amendment[4] which, with Hastings' modification, took the form of Section 4. "Nothing in this act shall be so construed as to legalize the suspension of specie payments, or any other violation or abuse of the

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[1] Journal of Council, p. 144.
[2] Iowa Standard, February 5, 1842.
[3] Journal of Council, p. 143.

charter of said bank. This was adopted by a vote of 9 yeas to 4 nays.

After an ineffectual attempt to postpone indefinitely the whole question, Bainbridge moved[1] to strike out the "4th day of March," and insert "the first day of August, 1842, provided, that said bank shall resume at as early a day, prior to the first day of August, as the Illinois Banks or the Bank of Indiana." This was adopted by a vote of 7 yeas to 6 nays.

Coop then offered[2] as Section 5, "That all persons resident within the Territory, who may be indebted, either by promissory note, bill, bond or account, or by verbal contract, or any other indebtedness whatever, to said bank, shall not be compelled by any law now in force, or hereafter to be enforced, in this territory, to make payment to said bank previous to resumption of specie payment by said bank." This was opposed by Bainbridge on the ground that it would necessarily be a law which "impaired contracts." At this point in the debate, there occurred a series of speeches in which Bailey of Van Buren, Hastings of Muscatine, and Bainbridge of Dubuque tried to prove, each for himself, that he was a Democrat.

Wallace of Henry argued that the Council was not informed upon the wishes of its constituents as it had received no petitions from them; and that the Council had no evidence that would incriminate the bank of fraudulent action.

After an attempt to lay the amendment upon the table, it was passed[3] by a vote of 7 yeas to 6 nays; and the bill was to be engrossed and read a third time the following day.

After the reporting[4] of its correct engrossment and upon the discussion of the question of its passage, Parker of Scott insisted that the proper course for the Council to have pursued would have been to appoint a committee to investigate it, and

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1 Journal of Council, p. 144.
2 Ibid, p. 144.
3 Ibid, p. 145.
4 Ibid, p. 150.

if fraud was discovered, to close the bank up immediately. Bailey was opposed to the tying of the Council by technicalities. The bill passed[1] by a vote of 7 to 6. The title was then amended so as to read "An act to require the Miners' Bank to resume specie payments, and for the relief of the debtors of the Bank in the Territory."

(*c*) Action of the House.

In the House the question of the Miners' Bank came up for discussion[2] on the 21st of January in the form of a Joint Resolution, authorizing an investigation of it. An attempt by Grant to have it postponed indefinitely failed, and then an attempt was made to offer a substitute[3] which required the President and Cashier to make a report upon its condition as required by the seventh article of incorporation. This failed of passage. After an attempt, which failed, of having it read[4] a third time, under a suspension of the rules, a number of dilatory motions were made, but finally the time fixed for the third reading[5] was February 18th; this proved to be the day upon which the Legislature adjourned.

On the 24th of January, an act[6] compelling the Miners' Bank to resume specie payment was introduced in the House and read a first time; on the 31st it was taken up for consideration.[7] The bill, as it had come from the committee of the whole, was so amended as to leave the time open for resumption of specie payments until the other Western banks resumed. The House disagreed to this upon a vote of 17 nays to 6 yeas. Two Whigs, Moss and Smead, voting in the negative; and two Democrats, Booth and Lewis, in the affirmative. Booth and Lewis were from Dubuque County.

Two amendments were made fixing the time of resumption at "March 1st" and "August 1st" respectively. A spirited debate arose upon these two amendments. The principal

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1 Journal of Council, p. 154.
2 Journal of House, p. 143.
3 Ibid, p. 143.
4 Ibid, p. 143.
5 Journal of House, p. 207.
6 Ibid, p. 146.
7 Ibid, p. 177.

speeches were made for and against the principles underlying the banking question. The party line was not drawn as closely here as in the Council, because of the peculiar wording of the bill, which declared that the bank had forfeited its charter by the suspension of specie payments and required it to resume again. Some voted against this act who were in favor of forfeiting its charter or of its suspending specie payments, because they claimed that it legalized the past suspension of specie payments. The opinion of this class of Representatives might be said to be represented by the protest[1] of Morgan, which was spread upon the minutes. Two of the reasons in this protest need only be referred to here. One of the reasons was that the bill had been legislated upon with the understanding that the bank by its suspension of specie payments had violated its charter, any law compelling it to resume at any time in the future would legalize its suspension; the other was an alternative of the above, if the bank had not forfeited its charter by its suspensions nor by any other abuse of its corporate powers, then it should be left subject to action for debt as private individuals are. The bill was carried by a vote of 21 yeas to 5 nays, and referred to the Council.

After this bill had reached its second[2] reading in the Council it was laid upon the table for an indefinite period.

The Council bill[3] (No. 103) requiring the Miners' Bank to resume and continue specie payment was read twice in the House, the last time[4] being February 7th, two days before adjournment.

On February 4th a Joint Resolution[5] (No. 119, H. R.), requiring the Miners' Bank to stop its discounts and issues while it continues to suspend its specie payments, was introduced and was passed on February 8th, by a vote of 18 yeas

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1 Journal of House, p. 191.
2 Journal of Council, p. 162.
3 Ibid, p. 144.
4 Ibid, p. 215.
5 Ibid, p. 212.

to 6 nays, and referred to the Council. This having been passed[1] the day before adjournment, it only reached its first reading in the Council.[2]

Although there was a majority in both branches of the Legislature in favor of compelling the Miners' Bank to resume and continue specie payments, on and from August 1st, 1842, we find that through a lack of good management by the Democratic party, which had a majority in the Council and the House, no bill was passed and the bank was permitted to go on the even tenor of its way until the next session of the Legislative Assembly.

2. *Proposed Bank at Davenport.*

On February 5, 1842, Mr. Grant gave notice[3] that on some future day he would introduce a bill to incorporate a bank in Davenport, Scott County. In accordance with this notice, two days later, he introduced No. 126, H. R. File, "A Bill to establish a Bank in the town of Davenport," which was read a first time by title.[4] A motion to reject was carried by yeas 21, nays 2. Mr. Grant voting for its rejection.

This was the summary ending of the second attempt to incorporate a bank in the Territory of Iowa.

3. *Change in Stockholders of the Miners' Bank.*

In June, 1842, a change[5] was made in the organization of the Miners' Bank of Dubuque. The controlling interests of the bank were bought by persons connected with the St. Louis Gas Light Company. Mr. Martin, the Cashier, resigned and his place was filled by Mr. Pearson, formerly a principal clerk in the Gas Light Company. The new directory was composed of Messrs. Whaple, Waller, Davis, Quigley and Farley, all of Dubuque, and who were of the highest standing in the

1 Journal of House, p. 222.
2 Journal of Council, p. 187.
3 Journal of House, p. 205.
4 Ibid, p. 210.
5 St. Louis Republican, June 16th, 1842.

business circles of the city. The financial standing of the bank now seemed to be better than at any previous time in its history.

In July twenty thousand dollars in specie[1] was deposited in the Galena Branch of the State Bank of Illinois, by the St. Louis Gas Light Company with which to redeem the notes of the Miners' Bank of Dubuque. The bank continued the redemption of its notes for about one week, when being disappointed in receiving ten thousand dollars in specie it again suspended. At the time of the last suspension of specie payments there were besides the notes held by the St. Louis Gas Light Company, only about eight thousand dollars in circulation, and the bank had at this time for their redemption about one thousand dollars in specie. During this period Mr. St. John of St. Louis purchased[2] forty thousand dollars of the stock by giving his note to the bank. As a stockholder he borrowed from the bank, on his individual notes, fifty-seven thousand dollars. St. John failed in business and took the benefit of the existing "Bankrupt Act," and by this transaction the bank sustained a clear loss of ninety-seven thousand dollars.

Later in the year, Dr. Barrett and Thomas Mather became the principal owners of the stock of the bank.

4. *Failure of the Territory of Iowa to Pay the Debt Due the Miners' Bank.*

As mentioned before, the Territory of Iowa had borrowed from the Miners' Bank of Dubuque five hundred dollars, and had given its note payable at the Missouri Bank in St. Louis. This note had become due on June 30th, 1842, and, upon failure to pay, it had been protested. The probability that the Territory would not be able to meet the payment of its five thousand dollar note when due and that it also would be

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[1] Davis testimony before Investigating Committee, Journal of House, 1843, p. 150.

[2] See Mobley's testimony, Ibid, p. 151.

protested, led to a correspondence[1] between the Territorial Agent and the officers of the bank. The Territorial Agent sought to influence them to hold the note for payment or adjustment at the bank in Dubuque, instead of forwarding it to New York for payment.

In his letter of August 13, 1842, to the Cashier of the bank, the Territorial Agent, after acknowledging the receipt of the notification of the protest, wrote that it had been impossible to meet this payment as the office came into his hands without funds; that he had been embarrassed with a large number of small debts outstanding from the previous year; that the only resources that were at his command during the year were the remainders of old debts due the office from previous sales, many of these were not collectible, and that any of them would be difficult to collect. The Legislature having repealed the law authorizing the agent to borrow money, and having passed an act requiring that the proceeds of the sales of city lots should be used only in payment for work upon and material for the capitol, it would be an absolute impossibility for him to meet any part of the debt due the bank this year. He was certain that the debt for $5,000 could not be met at maturity and the only practicable course to pursue that he could see, was to renew the notes.

On September 20th, he wrote a letter to the President and Directors of the bank which was to be handed to them by Hon. Francis Springer who was "one of the counsel" for the collection of debts due the Territory. Mr. Springer was to explain to them the financial condition of the Territorial Agent's office, and would be as an answer from him to them. Mr. Pearson, Cashier, in his reply of the 23rd of September, 1842, stated that he had "depended upon the prompt payment of that debt" as by its payment the bank would be able to redeem the small balance of their notes still in circulation. Bu he promised to retain the note in the bank, and acknowledge. a deposit of $50, made to the State's credit, and that "any

[1] Journal of Council, 5th Legislative Assembly, pp. 195-96.

arrangement you make for the payment, in small or large amounts, of the notes now due, and becoming due, will be satisfactory."

The Territorial Agent at the closing of his report suggests that as the note will not become due until December 28-31, 1843, there is time for the Legislature to make some arrangement for the payment or renewal of it and save its being protested.

5. *Attempt in the Fifth General Assembly to Revoke the Charter of the Miners' Bank.*

On the 5th of December, 1842, the Fifth Legislative Assembly of the Territory of Iowa convened, and on the third day of the session, Mr. Rogers of Dubuque gave notice[1] that at some future day he would introduce a bill to repeal the charter of the Miners' Bank and provide for winding up the affairs of the same. This bill was not introdued [2] by him until the second of January, 1843. It was considered in the Committee of the Whole on the same day and referred back to the House without amendment. An attempt [3] to refer it to the committee on Judiciary failed and it was finally referred to a Select Committee of one from each electoral district. To this committee of ten members was given the power to send for such persons and papers as may be had at Iowa City relative to the subject.

(*a*) Majority Report of Select Committee of House.

After two unsuccessful attempts by Mr. Rogers to secure an earlier report, one was finally made on January 23, 1843. The committee reported[4] the bill back without amendment and recommended its passage. The committee also reported that they had examined Joseph T. Fales, Timothy Davis, and

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1 Journal of House, p. 12.
2 Ibid, p. 69.
3 Ibid, p. 71.
4 Ibid, p. 150, et seq.

William Mobley in regard to the affairs and the methods of conducting the bank.

The most important statement of Mr. Fales was "that he believes, the stock of the bank was never paid in any other way than by the stockholders giving their notes to the institution." He also testified in regard to the suspension of specie payment by the bank, that he had presented notes to the bank for redemption and had been refused specie. That the officers of the bank threatened to shoot a constable if he should persist in his attempts to serve a writ of attachment on the property of the bank or open the doors of the bank building; that he had been paid forty cents on the dollar for the notes of the bank by one of the directors of it, and that the notes were worth from 37 to 40 cents on the dollar when he left Dubuque to come to the session of the Legislative Assembly; that he believed that nearly every one in Dubuque and the surrounding country, excepting those interested, wanted the bank's affairs closed up.

Mr. Davis, one of the directors, testified that a fifty dollar certificate of stock was handed to him to qualify him to act as director, and that he "intended to return the certificate when he ceased acting as director." He claimed that other directors were qualified in the same manner as he was. He also testified as to the transactions between the bank and the St. Louis Gas Light Company; and as to the amount of bills yet outstanding which were about eight thousand dollars.

Mr. Mobley of Springfield testified that the principal owners of the bank were Dr. Barrett and Thomas Mather; and that he had been hired by them before purchasing stock to investigate the condition of the bank. He gave an account of Mr. St. John's transactions with the bank whereby it lost the price of forty thousand dollars of the stock, and the fifty-seven thousand dollars which he had borrowed from it on his notes; he had become bankrupt and his debt to the bank was consequently a total loss.

The report discussed the suggestion that had been made

that if the charter of the bank was forfeited by the Legislature, the real estate would revert to the former owners. The case cited[1] was tried upon the validity of a judgment rather than upon the question of reversion. The argument was advanced that by its provisions the bank was permitted to purchase and hold real estate and that upon the forfeiture of the charter, this land would be assigned to the trustees for the benefit of the creditors of the bank. There was cited in support of this view the fact that the State Bank of Illinois held real estate to the value of one million dollars; and that the late U. S. Bank had real estate to the value of over six hundred thousand dollars, and if the doctrine of reversion were true, all of this would be turned over to the individual owners who had sold lands to the bank.

The committee drew the conclusion that "it will be seen that in three essential particulars, the charter of the Miners' Bank has long been violated and consequently forfeited."

First, the bank violated Sec. 20 of its charter in regard to paying for the stock subscribed; the testimony showed that "the stock subscribed was never paid in any other manner than by the stockholders giving their notes to the institution." This was clearly a violation of the charter and therefore a cause for its forfeiture, because it had proceeded illegally and contrary to its organic law. The community, at the time of its organization, naturally examined the stipulations of its charter as to the security of the notes before receiving them; and supposing that the bank would comply with its requirements, the community were induced to accept its notes. The amount actually paid in, the committee report that they have not been able to determine, "but are inclined to believe that the amount was small, compared with the amount stipulated for in the act granting the charter." They argued that if only a part of the capital stock was paid in "notes rather than in money, it would be fraudulent and justify the annulling of the charter." This being the case, they said,

[1] State Bank of Indiana vs. the State, 1 Blackford, 267.

"it is clear that the charter was wantonly violated," and that a base fraud has been perpetrated upon the public by the bank's methods of organization and that it should meet with a "swift and effective correction."

In the support of the second charge, the testimony of one witness is quoted that five of the directors instead of being bona-fide owners of stock previous to the time of election, had been given a $50 share of stock to permit them to make a technical qualification for the position of director, instead of following the spirit of the requirements of the charter, and that this act was an abuse of corporate power and repugnant to the public interest.

"The third and greatest delinquency of the bank" in the words of the committee, was the entire suspension of specie payments, in violation of Sec. 10 of the law of incorporation. That by the violation of this section, the Legislature had the right under Sec. 23 to revoke the charter.

The committee was of the opinion that the Legislature not only had the right to revoke its charter under Sec. 23, but that any subsequent Legislature had the authority to repeal any of the acts of a preceding Legislature, whether the acts of the preceding session have a repealing clause or not. That the Legislature had a right to repeal a law when it became "odious" to the people; and that the abuse of the privileges of the bank in suspending specie payments whereby it was swindling the people out of large sums of money by its depreciated notes made this law "odious" to the people; and therefore, upon this ground, this session of the Legislature had a right to repeal the act of the previous one which constituted it.

The committee indulged in the general opinion that beside the three particular fraudulent evasions of the charter enumerated above, "all the proceedings of the bank in its corporate capacity, subsequently to the forfeiture of its charter by reason of either of the above abuses, have been fraudulent, and that the directors are subject to prosecution accordingly,"

but, whether this opinion is right or wrong, there could be no question of the forfeiture of the charter; and more especially that there could be no doubt as to the power of the Legislature to annul it.

(*b*) Minority Report of Select Committee of the House.

On January 24th, the next day, the minority report[1] upon the same bill (No. 23, H. R.) was submitted. This report insisted that by the unconditional repeal of the charter of the Miners' Bank all of the real estate would revert to grantor or his heirs, and the debts due to and from it were extinguished. In proof of this theory, Angel and Ames' Corporations, p. 513, Commercial Bank vs. Lockwood, administrator, Harrington's Reports, Vol. 4, p. 115, and Blackford's Indiana Reports, Vol. 1, p. 216, were cited. Therefore, if the bill passed, the entire assets of the bank, amounting to over $60,000, would be lost to the bill-holders and creditors. The minority were opposed to the provisions of the bill vesting the appointment of trustees in the Judge of the Third Judicial District, because by the conditions of the bill the whole of the assets would be ultimately put in the hands of a single individual. They had the "fullest confidence" in the integrity of the Judge, but were opposed to concentrating such vast powers in the hands of any individual, unguarded by any checks against the abuse of that power.

For the reasons stated, the bill was objectionable in nearly all of its provisions.

It was cited from the testimony that the bank suspended specie payments in March, 1841, which was several months after the suspension of the banks in Illinois and elsewhere, the suspension continuing until June, 1842. During the time of the suspension the bank redeemed its notes in current funds "such as the bills of Illinois, Indiana and Kentucky banks"; and after its suspension it had made arrangements with the Land Office, by which its bills were to be received to "some small extent" in the payment for land entered, and to "some

[1] Journal of House, p. 164 et seq.

extent" had paid specie to the citizens in exchange for its bills of the denomination of five dollars.

The bank in July, 1842, had made arrangements by which $20,000 had been deposited in the Galena branch of the State Bank of Illinois, but $10,000 of this deposit had been countermanded, and on account of this the bank had been compelled to suspend again. At the time of this suspension there was only $8,000 of its notes in circulation, not controlled by its stockholders. The Territory of Iowa then owed the bank $5,876 and this sum, with the specie in the bank, would have been sufficient to have paid all the bank bills not controlled by the stockholders.

A statement of the condition of the bank at this time had been procured by the minority of the committee from one of the witnesses, Mr. Mobley, who had testified that it was taken from the statement of the Cashier and that he had examined the books of the bank and counted the cash and knew that it was correct.

Real Estate owned by Bank.....		$16,387.13
Personal property.....		1,481.37
Amount due from other banks and individuals on account.....		34,649.87
From Iowa Territory.....$5,876.25		
" Wisconsin.....	803.33	
" Dubuque County.....	500.00	
		7,179.50
Specie on Hand.....		1,032.33
Total Amount of Assets.....		$60,730.20

LIABILITIES.

Whole amount of notes in circulation as per Cashier's Statement.....$113,190.00		
Of this amount $105,190 is in the hands of the stockholders, leaving in other hands to be redeemed.....$	8,190.00	
All other immediate liabilities.....	7,897.27	
		16,080.27
Balance in favor of Bank....		$ 44,649.93

The testimony of the witnesses in regard to the payment of the capital as required by the charter still leaves this question an open one, and as in former cases was simply hearsay. Two of the witnesses, Messrs. Fales and Davis, in reply to the question, "How much stock was actually paid in?" Submitted in writing the answer, "Don't know." To the question, "How was it paid in?" the same witnesses answered in writrin, "Heard that some paid in money and others gave stock notes." These questions and answers in the minority report were a partial rebuttal of the statement in the body of the majority report that "the stock subscribed was never paid in any other manner than by the stockholders giving their notes to the institution"; and the testimony of the witnesses submitted in the majority report does not sustain their own statement. In fact, the evidence in regard to the original subscription of the stock was hearsay.

This report shows that St. John bought $40,000 of stock of the bank "owned by men in New York or some of the Eastern cities" of the Cashier; and that these notes became the property of the bank; and that the bank loaned[1] to him $57,000; that the stock had been recovered by the bank, but that the money loaned him was a total loss. The losses by the stockholders had been a heavy one. The change of the ownership of the stock in June, 1842, had not been detrimental to the bill-holders, as there had been paid out $25,000 in the redemption of bills of the bank, and no bills had been put in circulation. It was generally acknowledged by those most opposed to the bank that "the present directors are men of unimpeachable integrity, in whose honesty and business capacity, the community have the fullest confidence."

(*c*) Consideration of Reports by the House.

Immediately after the reading of this report the bill was considered[2] in the committee of the whole, several amendments

[1] On September 2, 1843, judgment by default was rendered against Harry St. John for $42,870.97, Docket B, 3rd Judicial District (Dubuque County), p. 233.

[2] Journal of House, p. 167.

made to it, and then reported back. The question upon the amendments was considered separately. The first section of the bill as offered provided for the revocation of the charter. The amendment offered provided that the act incorporating the Miners' Bank should be null and void as far as the act had granted to the bank "any privileges to loan money, discount paper or do any other banking privilege." To meet the argument in the minority's report in regard to the reversion of the land and the estoppal of the collecting or payments of debts by the Trustees to be appointed, a special provision was inserted as the concluding clause of this section. This provision was that nothing in the first section of the bill should be construed in such a manner as to prevent the Trustees, provided for by the act, from collecting all debts due to the bank and all claims against it, or from the transaction of the business necessary for the closing up of the affairs of the bank. This amendment was agreed to.

An attempt[1] was then made to have the Judge of the Second Judicial District make the appointment of the two Trustees, provided for in the bill, who were to settle up the affairs of the bank.

It was provided that all property of the bank which might be sold by the Trustees should be by "public outcry" after giving thirty days' notice of the sale.

An attempt to regulate, by an additional section, the priority of claims failed. This additional section provided that the necessary expenses of winding up the affairs of the bank should be a *pro rata* division made on all the legal liabilities of the corporation, but no payment was to be made on the stock until all the other legal liabilities were first paid.

An additional section provided that the present directors should act as Trustees for the stockholders and creditors until those provided for in this act were appointed.

An attempt to pass an amendment, providing that no debtor of the bank should take advantage "by reason of the bank

[1] Journal of House, p. 171.

having failed to comply with the provisions of the charter," was lost by a vote of 12 to 13.

The question of the engrossment of the bill and the third reading[1] of it the next day passed unanimously. Upon the question of its final passage all of the twenty-five members of the House voted in the affirmative; and the bill was referred to the Council.

(*d*) Action by the Council.

On January 25th the Council received[2] the bill[3] passed by the House. On the next day it was read the first and second times and referred[4] to the Committee on Judiciary. On February 16th the committee was ordered to report upon the bill. In the evening session an order to report[5] was unanimously passed; and the report was made against its passage and laid [6] upon the table until the next day. A motion to take from the table the next day[7] was lost by a vote of five yeas to seven nays.

This being the morning of the last day of the session no farther action was taken by the Council upon the Miners' Bank.

6. *The Claims of Improper Influences.*

In an editorial of the Iowa Standard of January 19th, 1843, it was stated that a very great change of opinion had taken place in relation to the Miners' Bank of Dubuque, for when the Legislature first assembled there was hardly a man to be found among the Legislators who did not expect the institution to be put in liquidation. But since that time the bill for the repeal of its charter had been in the hands of a committee and it had ascertained that men of capital were then in

1 Journal of House, p. 173.
2 Journal of Council, p. 89.
3 No. 23, House File.
4 Journal of Council, p. 91.
5 Ibid, p. 177.
6 Ibid, p. 182.
7 Ibid, p. 183.

possession of the bank and were ready to put $50,000 in specie into it, and were also willing to do business under any restriction or safeguard that the Legislature might see fit to impose. There had been received from the citizens of Dubuque a petition signed by more than one hundred and fifty business men, comprising persons from both political parties, asking that the charter of the bank be continued. These things had caused the matter to assume a very different form before the Legislature. It was further stated in the article that five-eights of the people of the Territory would desire to have the bank go into operation again if it were surrounded with sufficient safeguards to prevent any renewal of suspension. The desire for this continuation of the bank resulted entirely from the want of a circulating medium, under which the people of this state were laboring at that time. It was thought by very many conservative persons that if the bank should be put into a healthy condition again that it would furnish a currency by means of which men would be able to pay their debts.

The Iowa Capital Reporter, in commenting upon the editorial, stated that in order to justify members of the Legislature "in a little better manner than it has been done, and to show that they are not altogether fools, it is necessary for us to state and inform the public that they have a much more substantial argument for so sudden and great a change.[1] Some offers and promises of personal rewards and private advantage have, it is well-known here, been made from a certain quarter to certain members of the Legislature in consideration that they will interpose to save the bank." This undoubtedly had more weight with the members of the Legislature than any expectation that the State Bank of Illinois, which had been in a state of suspension of specie payment for more than eighteen months and was still unable to redeem its own bills, would furnish money to carry on the

[1] January 21, 1843.

business in this Territory. After a very exciting debate, a select committee was appointed by the Legislature, to investigate these charges.

(*a*) The Majority Report of Select Committee.

The Select Committee made their report[1] on February 1st. This showed that each of the members of both houses, the editors of the Iowa Capital Reporter, and Mr. Mobley, of Springfield, Illinois, had been examined as to the information that they might possess upon the subject under consideration. This testimony showed that Dr. Barrett of Springfield, Illinois, had written four letters to different members[2] of the Legislature who were personal acquaintances and friends. The general tenor of all of them was that he was negotiating[3] for the franchise of the bank and if it could be secured, a company would be formed and it would put in from $50,000 to $100,000 capital in specie. There were some incumbrances that could not be immediately removed and he did not wish the charter to be destroyed until the arrangement for removing them had been made. All that he desired was that the charter should not be revoked, and in six or eight months time he could remove the incumbrances. In all of the letters he promised to make it one of the best banks in the Union, and in one he wrote it is well known that he would not "wild-cat" it. In one of the letters the statement is made that undoubtedly the State Bank of Illinois would be forced into liquidation, and if the Dubuque bank could be saved, it and the State Bank of Missouri would be all that there would be left in operation in this western country. In two of them there are pledges that the bank shall be made useful not only to the whole territory, but the city of Burlington also would be benefited because of his interests in that city. The statement is made that the Dubuque delegation will be put right by Messrs. Corriell and Mobley if possible. It was clearly shown

1 Journal of House, p. 209.

2 Morgan, Leffler, Springer and Patterson.

3 See account of previous sale and testimony.

by the evidence that no member of the Legislature had been approached in reference to the bank in any other manner than by the means of these letters, except Mr Corriell[1] had told Dr. Andros, previous to the session of the Legislature, that it would be his "political death" if he interfered with the bank, and that it would be easier for its friends to make loans than others.

The report of the committee decided that there was nothing improper in the letters to members of the council, except that the one to Mr. Morgan contains a promise of private advantage, which showed that Dr. Barrett had improperly sought to influence Mr. Morgen's action in relation to the Miners' Bank of Dubuque. But the statement is made that there was nothing to show that Mr. Morgan or Messrs. Rogers[2] and Andros had been influenced in the slightest degree; but that, on the contrary, their conduct had been such as to show that they had not. It appeared that the editors had no grounds upon which to base the general charge.

In a series of resolutions, the majority report censured Dr. Barrett for writing the letters, and deemed that Mr. Mobley was to "some extent accessory to the offence of Dr. Barret by delivering the letters after he knew the contents of them." In the final resolution, the committee regarded the charge, implicating the members with having been influenced in their legislative action by promises of personal reward or private advantage, as utterly untrue and highly reprehensible in character, and therefore deemed the editors as deserving the censure of the House.

(*b*) Minority Report of Select Committee.

On the following day a minority report was submitted by Mr. Hepner.[3] It stated that offers of private reward had been made to members as printed in the Reporter. That a knowledge of this would awaken "a vigilant and faithful public

[1] Corriell had no interest in bank except $500 as a bill-holder. Testimony of Mr. Mobley.
[2] The Dubuque Delegation.
[3] Journal of House, p. 225, February 2, 1843.

press," and that they should have been communicated to the public. The offers were corrupting, and as to what influence they might have on the members was not known to anyone, therefore the paper should not be censured for communicating them to the public. The other paper[1] in the city had ascribed fallacious reasons for members' actions in regard to the bank; this had caused no comment. It was evident that the statement was made as an item of faith not fact. The opinion was given that this was not a subject within the jurisdiction of the House. "The public and the press had a right to speak of the conduct of the members of the Legislature," as freely, if not more freely, than of private men. This authority had been assumed one time by Congress,[2] but was speedily repealed. That for over forty years no State Legislature had dared to assume such powers, and it had long been regarded as dangerous to attempt it. The Judiciary department was the place to seek recourse if any was needed. The committee had been appointed to investigate as to "the innocence of the members of the Legislature, not for the purpose of punishing or censuring the press." In their minds it was doubtful if a committee would have been appointed by the House for the latter purpose if it had been so understood. That the "mover" for the investigation, under the guise of having his innocence declared, had taken advantage of it to assail the editors of the Reporter. This report was signed by Messrs. Hepner and Fleckner.

The reports of the committees were received and no farther action in regard to the subject of the reports was taken by the House.

7. *The Miners' Bank in the Sixth Legislative Assembly.*

The Sixth Legislative Assembly of the Territory of Iowa met on Decemher 4th, 1843. The opponents to the continuance of the charter of the Miners' Bank were determined not to be

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[1] Iowa Standard, January 10, 1843.

[2] Sedition Laws of 1804.

outwitted by its friends as they had been at the previous session. So we find that on the first day of the session, Mr. Rogers, Representative from Dubuque county, gave notice of the introduction of a bill[1] to repeal its charter; and in accordance with this motion presented "A Bill[2] to repeal the Charter of the Miners' Bank of Dubuque, and to provide for the winding up the affairs of the same," which was read[3] for the first time and ordered printed.

The bill[4] was called up on December 10th, and after an attempt to refer it to the Committee on the Judiciary it was referred to the Committee of the Whole and made the order of the day for the 11th; but upon that date consideration of it was postponed until December 15th.

On that date it was considered[5] in the Committee of the Whole and some minor amendments made to it and reported back to the House, which concurred in them. Mr. Rogers then sought to have the bill engrossed and read a third time on the next day and thus finish its consideration in the House. This action was defeated by a resolution introduced by Mr. Nowlin[6] that "Whereas, information has been received that there are now in circulation in the counties of Dubuque, Jackson &c., memorials to the Legislature relative to the Dubuque Bank; therefore, Resolved, That Bill No. 1, H. R. File, 'A Bill to repeal the Charter of the Miners' Bank of Dubuque, and to provide for the winding up the affairs of the same,' be laid on the table[7] until the 2nd day of January next." Under the rules of the House this resolution had precedence over Mr. Rogers' motion, was put and barely passed by a yea and nay vote of 13 to 12.

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1 Journal of House, p. 4.
2 No. 1, House File.
3 Journal of House, p. 8.
4 Ibid, p. 19.
5 Ibid, p. 28.
6 One of Committee for examination of bank in 1839.
7 Journal of House, p. 29.

(*a*) Reception of Petitions.

On January 1st, "Mr. Grimes presented a letter of instruction to the Des Moines County delegation."[1] This instructed them to vote for the passage of a law which would compel the Miners' Bank to resume specie payment within thirty days, and in case that they would not, to authorize the appointment of commissioners by the Judge of the District Court to settle up its affairs. The petition was signed[1] by 1172 citizens of the county. A point of order being raised, that the letter was not addressed to the House, and so could not be received, was sustained.

Mr. Johnson presented a petition to the House from 96 citizens of Des Moines County, asking that the charter of the Miners' Bank be repealed, or that the stockholders be compelled to pledge real estate for the security of the notes that had been or might be issued by the bank. This petition was received and laid upon the table.

On the next morning[2] the speaker stated that upon further reflection, although he was not fully satisfied that his decision of the previous day on the House receiving the letter of the Des Moines County delegation was incorrect, still he thought it right and proper to reverse that decision and gave for his reasons:

1st. Because there is some analogy between the present and the case of the receptions by Congress of instructions directed to members from particular states, by the Legislatures of the same.

2nd. And mainly because the Speaker conceives it the safer course in cases of this kind to leave the question of reception with the House.

The instructions were again presented by Mr. Grimes and upon his motion that they should be received by the House, all the members present (20) voted in the affirmative.

This day was marked by the reception of petitions in regard to the Miners' Bank of Dubuque. Mr. Brophy presented a

[1] Journal of House, p. 38.
[2] Ibid, pp. 39-41.

letter of instruction from 173 citizens of Clinton County, urging that the Representatives from that county vote for a law which would force the bank to close up its business or resume specie payments by the 1st of March, 1844. Mr. Rogers presented a petition from Dubuque, Delaware and Clayton counties, "praying that further time be given to the Miners' Bank to resume specie payment." This was signed by 559 persons. This, upon motion of Mr. Rogers, was referred to a select committee consisting of the delegation from Dubuque, Delaware and Clayton. Mr. Foley of Jackson County presented a letter of instruction from 213 of his constituents, instructing him to use his exertions for the passage of a law which would require the Miners' Bank to either resume specie payments in thirty days from its passage or force it to cease its business. This was referred to the select committee, to whom the petition presented by Mr. Rogers had been referred, and Mr. Foley was also added to that committee.

Later in this day's session[1] a bill to repeal the charter of the Miners' Bank, etc., came up and further action upon it was postponed until January 8th, 1844. The reasons given for this motion being the expected arrival[2] of more petitions from Des Moines and Jackson counties.

On the next morning Mr. Foley of Jackson County presented the petition of 96 citizens of that county asking that the Miners' Bank be compelled to resume specie payments upon April 1st, or suffer a revocation of its charter; and a petition from 27 citizens asking that "the affairs of the bank be wound up." To the various petitions presented previous to this, there had been more than twenty-four hundred signers, all of whom had petitioned that the bank should be compelled to resume specie payments or as a last resort be compelled to wind up its affairs; but this petition was the first that asked for an absolute closing of the business of the bank as the only

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[1] Journal of House, p. 49.

[2] Iowa Standard, January 4, 1844.

course. On January 8th[1] a similar petition to the last one was received, signed by 30 residents of Clinton and Jackson counties; and again on the 10th a petition[2] from Jackson County with 188 signers asked that the Legislature would take no other action than to "repeal its charter and wind up its affairs." On the next day a petition[3] from Des Moines County with 57 signers was received praying that the "affairs of the bank be wound up without further indulgence."

(*b*) The Discussion in the House.

On January 11th,[4] after considering the bill in the Committee of the Whole without making any amendments, Hackleman from Des Moines County moved to amend the bill by inserting after the enacting clause, the following:— "That the Stockholders of the Miners' Bank of Dubuque, be and they are hereby required to redeem and pay specie for all notes issued by said bank, that may be presented at their counter within thirty days after the passage of this act, and continue at all times thereafter to pay specie when called for, and if they refuse so to do, then said charter shall be wound up according to the provisions of this act.

"Provided, That unless the stockholders of said bank shall within thirty days after the passage of this act, mortgage to the Territory of Iowa, four hundred thousand dollars worth of real estate, lying and being situated in the Territory of Iowa, which shall be valued at a fair value, to secure the payment of the notes that are, or may be hereafter issued by said bank, and that the Judge of the Third Judicial District have power, and it is hereby made his duty to appoint three disinterested Commissioners to value said land under oath, to the best of their judgment, who shall take and receive said mortgage in the name of the Territory of Iowa, and that they have the same made a matter of record, in the Recorder's Office of the County of Dubuque, in said Territory, and that said bank pay all charges for the same, and further, it shall be the duty

[1] Journal of House, p. 64.
[2] Ibid, p. 72.
[3] Journal of House, p. 73.
[4] Ibid, p. 75.

of said Commissioners, to examine into the affairs of said bank, and report to the said Judge every three months." This motion was lost by a vote of 4 to 21.

An attempt was made to amend the bill by the insertion after the enacting clause of what was practically a new bill and one that was in accordance with the spirit of the majority of the petitioners and letters of instructions sent to the House and to the different delegations. It consisted of three sections;[1] the first required that the bank should resume specie payments within thirty days after its passage; the second, that in case of failure to comply with the first provision, the District Attorney should sue out a writ of *quo warranto* against the bank and prosecute the same to final judgment; the third made provision that in case the bank did resume and afterwards at any time failed to pay its "legal liabilities in gold and silver coin, it shall be the imperative duty" of the District Attorney to proceed as directed in the second section.

An attempt was made to amend this amendment by the addition of a clause substantially the same as the "land mortgage clause" quoted before.[2] This amendment to the amendment was decided in the negative, having upon its second presentation gained only one vote—the vote being 5 yeas to 21 nays.

Further action upon the amendment went over until the next day. The report[3] of the Select Committee was made upon the petitions from Dubuque County. This report stated that of the 559 signers some were found to be "not naturalized, some not of age, some living in Illinois, some in Jackson and Jones Counties," and that many of the names were unknown to the chairman and he was unable to describe where they lived. After calling attention to the wording of the petition, Mr. Nowlin states[4] that he feels himself to be instructed by a "large and respectable portion" of the citizens of his district to support any measure that will compel the

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1 Journal of House, p. 75.
2 Ibid, p. 76.
3 Journal of House, pp. 77–78.
4 Ibid, p. 78.

Miners' Bank to resume specie payment within a short time and compel it to do a safe business for the people. His opinion was that the only way to do this was by the mortgaging of land for security of the issues of bank notes.

The consideration[1] of the amendment was then taken up, and an amendment was offered by providing that upon failure of the bank to resume specie payments, that persons holding such liabilities could proceed against the stockholders and collect out of their private property as in the case of individual debts, this was accepted as a part of the amendment and the vote upon its passage was lost by a vote of 8 to 17.

The bill as it was now left required that the charter of the bank should be repealed and its affairs closed up and the engrossment of the bill in this form was decided in the affirmative.

In the interval between its engrossment and final passage, Mr. Rogers presented the petition[2] of several citizens of Iowa City, praying the Legislative Assembly to pass a law to resuscitate the Miners' Bank of Dubuque, provided, that the Stockholders caused to be paid into the office of the Secretary of the Territory the sum of $10,000 as a bonus; the said sum to be appropriated for the encouragement of the emigration of marriageable females from New England to this Territory. This was referred to a select committee.

On January 13th[3] the bill was passed by a vote of 18 to 7, a strictly party vote; and then referred to the Council.

(*c*) The Discussion in the Council.

In the Council,[4] on January 15th, there were presented petitions and remonstrances from Des Moines County for and against the passage of a law to compel the Miners' Bank to resume specie payments. On the same day the House bill[5] repealing the Charter was received and read the first and

1 Journal of House, p. 78.
2 Ibid, p. 81.
3 Ibid, p. 84.
4 Journal of Council, p. 73.
5 No. 1, House File.

second time, and it and the petitions and remonstrances were referred to a Select Committee.

The next morning the Select Committee[1] made a report amending the bill; these amendments made it practically a new bill as they changed the whole tenor of it. All after the enacting clause was struck out and the first section required that the Miners' Bank should resume specie payment within thirty days after the passage of the act. The second that if the bank did resume specie payments, it should make its notes redeemable at par in gold or silver in the cities of Burlington, St. Louis and New York; and a provision was made that the Cashier should make sworn statement of the condition of the bank every ninety days and have the same printed in the newspapers of Dubuque. The third section provided that if the bank failed to resume specie payments or at any time should fail to continue the payment at any of the places where they were made redeemable, the District Attorney of Dubuque was to swear out a writ of *quo warranto* and prosecute the same. The act was to be in force immediately upon its passage.

This bill as it had passed the House was in consonance with the principles of the Democratic party in regard to banks at this time—that was to close them up as soon as possible by the Legislature revoking the Charter; but the bill as reported back by the Select Committee was completely in accordance with the Whig ideas in regard to banks—that was to make their currency safe; and if that were not safe to proceed against them by legal action.

On January 17th, the bill came up as reported[2] back for consideration by the Committee of the Whole, and no amendments were made to it; but in its consideration by the Council an attempted amendment was lost by a vote of five to eight. This required that the bank before commencing business should transfer in trust to the Territory $150,000 worth of real

[1] Journal of Council, p. 77.
[2] Journal of Council, p. 81.

estate for the protection of the note holders "in case of suspension of specie payment or a violation of any kind," this real estate was to be held under the direction of the Governor.

An amendment was then made, "That the President, Directors and Stockholders of said bank shall be liable in their individual estates and in case of a failure to pay specie at all times, they shall be liable to be sued and recovered from at all times and places wherever they may may be found." This was an unlimited individual liability clause, and the most drastic measure that had ever been proposed, or had been passed by any Legislature for the protection of the note holders.

A further section[1] was added by an amendment which provided that if the bank should import into the Territory any note of a less denomination than five dollars, "or notes of any size not equally as good as specie in Du Buque," the charter was to be forfeited and the bank was to be closed up as provided. This amendment was changed by striking out "or notes of any size not equally as good as specie in Dubuque, etc.," which simply left it as a prohibition upon the importation and vending of bills of a less denomination than five dollars, and permitted them to bring in and pass depreciated bank notes as was the general custom of banks.

An attempt was made to further amend the bill by requiring that the bank within a year should pay a bonus[2] of $10,000 to the Territory. This was lost by a vote of 5 yeas to 8 nays. The engrossment of the bill was ordered.

On the farther consideration[3] of the bill, the unlimited liability clause was restricted to the amount of the respective shares owned by the stockholders.

The report as to the condition of the bank was to be made by the Cashier, and it was attempted to amend it so as to show the names of the stockholders, and the number of their respective shares, "and such a statement shall be *prima facie*

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1 Journal of Council, p. 82.
2 Ibid, p. 83.
3 Ibid, p. 91.

evidence of their liability in all cases;" but the last clause was struck out and all that was changed in making the report was that the names and respective shares of the stockholders should be inserted in the report.

On January 20th[1] the bill passed the Council without further amendment by a vote of 10 yeas to 3 nays.

The bill as it had passed the House provided for the revocation of the charter and the winding up the affairs of the bank. As it passed the Council it provided for the resumption of specie payment in 30 days; the making the bills equivalent to specie not only at Dubuque but also at Burlington, St. Louis and New York; in case of failure to comply with the above, "the winding up the affairs of the bank;" that the stockholders should be liable to the amount of their stock; that the bank should not import and vend the bills of a denomination less than five dollars; that a report of the condition should be printed at least once in ninety days, which should show the names and respective shares of the stockholders; and that it was to be in force after the passage of the act.

The bill in this form would have afforded a reasonably safe circulating medium in prosperous times, and when at the same time its stockholders were men of property. By the conditions of the charter the bank was allowed upon a capitalization of $100,000 to issue notes to the amount of $200,000. The only guarantee back of these notes being the capital of the bank, hence by the restrictions of the charter there was, considering the capital not to be in any way impaired, a guarantee of only 50 per cent on the maximum of circulation. By the restrictions added by this act, conceding that each of the stockholders owned property (not exemption proof) to the amount of his respective stock, an additional safeguard of 50 per cent was added to the maximum circulation. That is, under the most favorable circumstances, the note holders were fully secured. Under the most unfavorable circumstances when there was a total impairment of capital and an

[1] Journal of Council, p. 95.

entire lack of legal liability upon the part of the stockholders the security of the notes became nothing. But it is probable that under the management of conservative business men of responsibility that the notes in ordinarily prosperous times would have always been current at par. The demand for them to use instead of exchange on St. Louis and New York, the principal trading centers of the Territory, under certain circumstances, would have caused them to have been above par. The notes would have been far superior in regard to safety to most of the circulating medium found throughout the Territory at this time, as practically all in circulation were at a discount. In summation it may be said that if this bill could have been passed, and if it then should have been accepted by the bank and put in operation by such a company as secured control of it in the following April, it would have been a blessing to the business interests of all classes of citizens in the Territory of Iowa.

(*d*) The House Refuses to Concur.

The House, on January 23, 1844, refused to concur[1] in the amendments made to the bill by the Council by a vote of 11 to 14; and on the next day the Council passed a motion to postpone action upon the bill until the next "Fourth day of July." This was the death blow to any farther legislative action upon the affairs of the bank at this session.

8. *Resumption of Specie Payments by Miners' Bank.*

The Miners' Bank of Dubuque suspended[2] specie payments on March 29, 1841, and resumed the payments of its liabilities in gold and silver on the 19th of April, 1844. This resumption[3] was made soon after the election of M. Mobley as Cashier, formerly connected with the State Bank of Illinois at Springfield. From this time until the day that the charter of the bank was repealed, the bank met all of its obligations in specie, if so desired. During the period of its suspension its

1 Journal of House, p. 122.
2 See Iowa Standard, April 16, 1841.
3 See Iowa Standard, April 26, 1844.

liabilities depreciated very much. It was claimed that they had been bought in at a very great discount by the non-resident stockholders of the bank, and that in this manner they had realized a large sum.

Shortly before this we find that a number of citizens of Dubuque and adjoining counties had petitioned Governor Chambers to direct the district attorney to file *quo waranto* proceedings against the bank; but the governor refused to grant the request. The radical anti-bank paper of the Territory, the Iowa Capital Reporter,[1] could see no reason why this reasonable request was refused, for the bank would have a chance to defend itself in a court of law, and if, as its friends claimed, there had been no violation of the charter, no forfeiture could be declared, and the bank would come out of the ordeal with a better credit than it had ever had since its organization. If the governor had permitted this prosecution to have been commenced, the bank would have had the advantage of a strong federal bank Whig to prosecute the case against it, which many deemed would have been a decided advantage for the bank over its opponents. It also stated that those persons who had attempted to bring the bank to justice had been defeated three times and that they were about to make a petition to the district court to bring it to trial. This case, after various delays, came up for trial in the May term of court in 1845. The case was ready for the jury when it was dismissed. The friends of the bank claimed that it was because the prosecution was unable to prove fraud or mismanagement in its corporate affairs. The prosecution claimed that the reason why the case was dismissed was because the books of the bank were so mutilated that it was an impossibility to tell what the character of the earlier organization of the bank had been.

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[1] March 19, 1844.

CHAPTER VI.

The Question of Banking Before the Constitutional Convention of 1844.

1. *The Majority and Minority Reports on Banks.*

The first constitutional convention met at Iowa City, on October 7, 1844, and on the morning of the 11th the Committee on Incorporations made a majority and minority report[1] on banks. The majority report provided for a bank with branches, but not more than one branch could be organized for every six counties. The bill to establish such a bank and its branches was to be passed by the majority of members elected to both houses of the Legislative Assembly, to be signed by the governor, and then to be approved by a majority of the "qualified electors" of the state before it became a law. One-half of the capital stock was to be "actually paid in gold or silver," and this amount was to be in no case less than one hundred thousand dollars. The bank and the branches were not to issue any notes of a less denomination than ten dollars. The remedy for the collection of debts was to be reciprocal against the bank and its branches. The legislature reserved to itself the power "to put an end to the corporate powers and privileges" if the bank or its branches refused to pay on demand any "bill, note, or obligation issued by the corporation, according to the promises therein expressed." The Legislature also reserved the power to alter, repeal, or amend the charter, at any time that they might deem that the public good required it. The stockholders were to be respectively liable for the debts of the bank and its branches.

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[1] Journal of Convention, p. 28.

On the 19th the reports of the committee came up for consideration, and a motion[1] was made to strike out the majority report and insert the minority report, which was: "No bank or banking corporation of discount, or circulation, shall ever be established in this state." The debate upon this motion commenced early in the morning session and continued through that and the afternoon session. In the warmth of debate, the question of party politics was introduced, and an attempt was made to draw the lines and force the delegates to vote according to the principles laid down by the democratic or whig party. The convention was democratic in politics, but many of the delegates elected by the democrats had been, or at least felt that they had been, pledged to vote for a well regulated and safe-guarded system of banks of issue. The discussion of these questions of actual and implied pledges called forth from one of the delegates the remark,[2] "that if the delegates were pledged, he supposed that they would have to vote against their principles, and the result would be that this democratic convention would pass a whig constitution." But the final result of this day's attempt to draw party lines was unsuccessful; the strongest argument against the dragging in of partisan politics was made by Lowe[3] of Muscatine county, and Lucas of Johnson.

The strongest argument made against the majority report was that many abuses could creep in under the regulations as they had been made in it. The difficulty of ascertaining whether the required amount of specie was paid in or not, was pointed out, and it was shown that these requirements had been evaded in Massachusetts by the directors borrowing the specie until after inspection was made by the State Commissioners and then passed on to other banks for their use.

The individual liability clause was attacked on the ground that if a "swindling concern" was to be organized that the stockholders and officers would be found exemption proof as

[1] Journal of Convention, pp. 89–90.
[2] Iowa Standard, October 24, 1844.
[3] Ibid.

they had been when connected with like concerns in the past. The history of the abuses of different banking systems was fully discussed; but the conclusion was reached that judicious amendments of the majority report should be attempted before it was rejected. The question of the substitution of the minority report was defeated and farther consideration of the possibility to form a banking system for Iowa was assured.

When this report came up for consideration again, an attempt was made to strike out all the bill after the first provision, requiring the law to be submitted to a vote of the directors, and leave the regulation of the details of the banking system to Legislative authority rather than to incorporate them into the Constitution. The central ideas of those in favor of striking out the provisions seemed to be a desire to give freedom to legislation, and that the Legislature, was the proper body to devise special restrictions; another was that no plan of restrictions that could be inserted in a Constitution would be sufficient to procure complete safety to note holders.

One argument introduced was that if the unlimited individual liability clause was retained the effect of it would be that only men of great means would invest money in legitimate banking business; by reason of the large number of shares owned by them, they would be able to control the management of the business and in this way protect themselves against loss. This would have a tendency to prevent men of limited means, such as laborers, artisans, etc., from investing their surplus money in the banks. To place the banking system of an entire state in the hands of a few persons would tend to make the whole system insecure; for where the most stable banking systems were formed, in the Eastern states, the capital of the banks was owned by small stockholders. Objections were made to the repeal of the amendment or repeal of the charter by the Legislature, but in support of this provision the laws of Massachusetts were cited to show that such action was not based on a new principle.

The debate upon this brought out the position of the Whigs

to be that of keeping of all restrictions out of the Constitution, leaving to the future Legislatures, before which the chartering of a bank might come, the deciding of the character of the details in the light of all the knowledge the Convention now had and that might be gained in the interval. The Democrats occupied two positions. Those of that party who had been in favor of the minority report were in favor of not only the restrictions in the majority, but others and stronger ones. Those in favor of the restrictions of the majority report were in general men who either favored a well-regulated banking system from principle, or who considered themselves pledged to assist in devising a well-regulated system, and they were in favor of having some of these restrictions in the Constitution and leaving some of them to be provided by legislative action. The result of this division of opinion among the Democrats and a portion of them combining with the Whigs led to a division of the question and a consideration of each restriction separately.

The motion to strike out the second section,[1] providing that the bank and branches should not commence operations until half of the capital stock subscribed for shall be actually paid for in gold and silver, when it came to a vote produced a curious result. No hard money Democrat could vote against such a proposition; and only five votes of Whigs who held extreme views upon leaving restrictions to the legislative action voted to strike out the provision.

The amendment to the third section, changing the denomination of the smallest bill to be issued from ten to fifty dollars, caused eighteen persons, mostly radical anti-bank Democrats, to cast their vote in favor of it. An attempt to reduce the size of the smallest bill from ten to five dollars was lost[2] by a vote of twenty-four to forty-five. The great majority voting in the affirmative were Whigs. On the next morning[3] the attempt to strike out entirely the provision, providing that the

1 Journal of Convention, p. 93.
2 Journal of Convention, p. 94.
3 October 22, 1844.

bank "shall not have the power to issue any bank note of a less denomination than ten dollars," only received fifteen votes in the affirmative, all Whigs, while fifty-two were cast against it.

The section in regard to the remedy for the collection of debts being reciprocal was not struck out.

An attempt was made to amend[1] the section "The stockholders shall be liable respectively, for the debts of said bank and branches," by the addition of two clauses. They were:

In any sum not less than double the amount of the capital stock described in their charter, in good real estate, to be valued by persons appointed by the Legislature of the State, approved and signed by the Governor and Secretary of State, and they shall never be allowed to take any security, either directly or indirectly, for any money loaned by them in their corporate capacity.

That no bank chartered[2] under the regulations of this Constitution shall ever lend any money or any bank note or bank notes to any member of the Legislature, or any other officer in any civil department of the State.

This amendment was defeated by a vote of 14 to 52; and from that one requirement, that of forbidding the taking of security for debts, it seems as if the vote against it should have been greater.

But the fifth section[3] was amended by inserting "jointly and severally" for "respectively" and by adding to at the end of the section "whether they hold the stock in their own names or by trustees, to the full extent of the debts of such bank." The motion to strike out the amended section was lost by a vote of 17 to 52.

The sixth section[4] was amended by striking out "according to the promise therein expressed" by a vote of 53 to 16. This section, as amended, would make it impossible for a bank organized under the law to issue any post note, or any other kind of an obligation than a demand obligation.

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1 Journal of Convention, p. 96.
2 Ibid, p. 96.
3 Journal of Convention, p. 97.
4 Ibid, p. 98.

An additional section[1] was offered to be inserted after the sixth, which provided that "No bank shall be allowed to issue a greater amount of bank notes than double the amount of capital stock actually paid into such bank in gold and silver," but it was rejected.

The seventh section,[2] which secured to the legislative assembly the power to amend or repeal the charter, was attempted to be amended by a provision requiring the act of repeal to be passed by both houses, approved by the governor, and submitted to the people at the next general election, and if a majority of the qualified electors approved it, the act of repeal was to become a law. The amendment was not agreed to; and the section was not struck out.

An additional section[3] was added, which was that "Any violation of, or non-compliance with the provisions and restrictions contained in this section, by the stockholders, commissioners or officers, or persons connected with the creation of any such bank or its management, in any of its accounts, exhibits, certificates of stock paid, or by embezzling its funds or property, shall be punished by fine or imprisonment in the penitentiary, and shall subject the offender to the same disqualification as conviction for infamous crimes." The vote upon this additional section was 37 yeas to 33 nays.

An amendment requiring the pledging in real estate or United States stock to three times the capital, as a security for the redemption of the liabilities of the bank was voted down by a decisive vote.

As decisively, an additional clause[4] was passed forbidding the State of Iowa from becoming either directly or indirectly a stockholder in any bank or corporation.

By a vote[5] of 27 to 29, there was rejected an amendment which provided that only one bank charter should be passed by the same Legislature.

The report[6] of the Committee on Incorporations as now

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1 Journal of Convention, p. 99.
2 Ibid, p. 99.
3 Ibid, p. 100.
4 Journal of Convention, p. 103.
5 Ibid, p. 104.
6 Ibid, p. 107.

amended was finally referred[1] to a Select Committee,[2] after unsuccessful attempts to refer it to the Committee on Judiciary and to the Committee on Incorporations.

2. *Report of the Select Committee on Banks.*

On October 25th the Select Committee on Banks submitted its report[3] to the convention. They recommended that the portion of the amended report of the Committee on Incorporations that referred to one bank (Sec. 1) be indefinitely postponed, and added section 4.

The report as amended and re-arranged by the Select Committee now consisted of the following sections:

Sec. 2. The assent of two-thirds of the members elected to each house of the Legislature, shall be requisite to the passage of every law, for granting, continuing, altering, amending, or renewing any act of incorporation.

Sec. 3. No act of incorporation shall continue in force for a longer period than twenty years, without the re-enactment of the Legislature, unless it be an incorporation for public improvement.

Sec. 4. The General Assembly shall create no bank or banking institution, or corporation with banking privileges in this State, unless the charter with all its provisions shall be submitted to a vote of the people at a general election for State officers, and receive a majority of all the votes of the qualified electors of the State.

Sec. 5. The personal and real property of the individual members of the corporation hereafter created, shall at all times be liable for the debts due by any such corporation.

Sec. 6. The Legislative Assembly shall have power to repeal all acts of incorporations by them granted.

These sections followed very closely the different articles of other State Constitutions and the principles of the banking laws of other States. The second section followed very closely the requirements[4] of the Constitution of New Jersey. The period of incorporation was, of course, common in nearly

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1 Journal of Convention, p. 107.
2 Hall, Galbraith, Bailey, Langworthy, Evans, Chapman, Randolph.
3 Journal of Convention, p. 121.
4 Required 3-5 for granting, altering, continuing or renewing.

all charters granted by the different States. The fifth section was found in the laws of Massachusetts, Rhode Island and Connecticut. It is almost an exact copy of the law of Massachusetts. In Pennsylvania the power was reserved to the Legislature to repeal charters as provided in the sixth section of this report. The provisions of the fourth section in regard to submitting the question to the people is found in many of the constitutions, and also in many of the laws in regard to the establishment of banks.

This report was taken up for consideration by the Convention on the 28th of October. An attempt was made to change the provision of the fourth section requiring that the vote giving assent to the incorporation of a bank should be a majority of all qualified electors in the State to a majority of those casting a vote upon the question; but this was lost by a vote of 21 to 44. This was followed by a series of amendments of all kinds and conditions. Seemingly every delegate with a "pet provision" sought to have it inserted. An especial attack was made by the means of amendments, to have the restrictions already adopted applied to banking corporations alone, leaving other corporations exempt from them.

In the debate upon the different amendments exempting corporations from the restrictions applied to banks, a special appeal was made by the Whig members to the delegates from the southern portion of the State as to the need of corporate bodies for carrying on the internal improvements of the State, such as slack-water navigation of Des Moines river. But all attempts to pass amendments to exempt other corporations than banking institutions from these restrictions were futile.

The radical anti-bank delegates were defeated in an attempt to amend so that "no bank of circulation shall be established in this State" by a vote of 16 to 52. An attempt to postpone the establishment of any bank until 1860 was also defeated.

The requirement of a "two-thirds" vote to charter a bank was changed to a "majority;" and in the same section submitting the charter to the vote of the electors the phrase "and

receive a majority of all the votes of the qualified electors of the State," was changed by the addition of "cast for and against."

A substitute section[1] was inserted in place of the sixth which declared that "The property of the people of this State shall never be used by any incorporated company without the consent of the owner." Another section[2] added was that the state should never, directly or indirectly, become a stockholder in any bank or other corporation.

A substitute for the whole report was offered which only differed from it in some minor particulars; this was rejected by a very large majority.

The report was ordered engrossed.

3. *Report of Committee on Incorporations.*

The report[3] of the Committee on Incorporations was called up again on the 31st and read a third time. An attempt to refer the report to a Select Committee with instructions to make the restrictions applicable to banking institutions alone was lost by a vote of 21 to 41. A motion[4] to postpone indefinitely was lost; and the article on Incorporations was passed by a vote of 45 yeas to 22 nays.

The final form of Article 9, Incorporations,[5] as left by the Committee on Revision was as follows:—

1. No act of incorporation shall continue in force for a longer period than twenty years, without the re-enactment of the Legislature, unless it be an incorporation for public improvement.

2. The personal and real property of the individual members of all corporations hereafter created, shall, at all times, be liable for the debts due by any such corporation.

3. The Legislature shall create no bank or banking institution, or corporation with banking privileges in this State,

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1 Journal of Convention, p. 52.
2 Ibid, p. 183.
3 Journal of Convention, p. 183.
4 Ibid, p. 184.
5 Journal of Convention, p. 199.

unless the charter with its provisions shall be submitted to a vote of the people at a general election for State officers, and receive a majority of the votes of the qualified electors of this State, cast for and against it.

4. The Legislative Assembly shall have power to repeal all acts of incorporation by them granted.

5. The property of the inhabitants of this State shall never be used by any incorporated company, without the consent of the owner.

6. Corporations of a public nature, such as counties, towns, villages, and the like, shall not be subject to the foregoing provisions.

7. The State shall not, directly or indirectly, become a stockholder in any bank or other corporation.

4. *The Constitution of 1844, as Viewed by the Press and People.*

The Constitution of 1844 as a whole gave general satisfaction to the people and the press. The amendment by Congress, changing the boundaries and very much diminishing the area of the proposed state, caused its rejection by the people.

The only paper which from the very first opposed the proposed Constitution was the Dubuque Transcript, which opposed it upon a number of grounds, one of them being that the provisions in regard to banks, and especially private corporations, were not liberal enough.

It is quite certain that the leaders of the Whigs, for political reasons alone, were opposed to the Territory of Iowa becoming a State at this time; but only general opposition was made to it by them.

The Democratic press of the Territory were in favor of it, at least up to the time of the change of the boundaries by Congress. There were many of the provisions that they were not in complete accord with, but they accepted the Constitution as a whole and supported it. The whole of the Democratic press was especially pleased with the article on Incorporations.

One[1] of them in its editorial columns contained the following:

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[1] Capital Reporter, November 9, 1844.

"The Constitution contains many sound provisions which will, we doubt not, exclude most of the prominent curses which have overrun the new States. Amongst these, the limitations on corporations stands first and foremost. These soulless monsters have tyrannized enough and we rejoice that Iowa, in the outset has bound the hydra hand and foot, for all purposes of mischief, and left its friends, if they are disposed to test its virtues, properly restrained by law, an ample field for experiment."

The Cincinnati Enquirer,[1] one of the ablest Democratic journals of the West at that time, published the following in regard to corporations: "They have also decided to give the power in the constitution for a banking system, but with all the restrictions which have at all times been contended for by the Democrats, and are so essential in making them perfectly safe, or as near safe as can be, viz: making the stockholders personally liable, the charter to be submitted to the people to be voted for or against, the Legislature the right to alter, repeal or amend * * * *."

The Ohio Statesman[2] published the whole Constitution in one of its issues, and in the editorial column the following is found: "Its provisions in relation to corporations and banks, and common schools, are admirable and show that intelligence and jealousy of incorporated wealth go hand in hand. We are rejoiced to find that the public mind is waking up to these subjects, and that they consider them of sufficient magnitude to engraft them upon the Constitution." After quoting the provisions in regard to submission to the people, the individual liability clause, and that the State shall not become a stockholder in any bank, etc., the editorial continues: "Let this provision be remembered by our own speculators who would make our own State a scape-goat for their schemes, and the people dupes for their plunder. * * * The whole is filled with provisions which show the progressive character of insti-

[1] November 20, 1844.
[2] November 22, 1844.

tutions and the increasing jealousy of the public mind on the subject of the anti-republican dogmas of Federalism. Thousands will emigrate to Iowa from their admiration of its Constitution, and the love of unadulterated liberty."

The Cincinnati Globe[1] published the Constitution in its columns and also the Indiana State Sentinel,[2] the latter claiming that it was the best State Constitution "in the confederacy."

In all points of the Territory there was no really serious opposition to the Constitution, and it is quite certain that if there had been no change of boundaries by Congress the Constitution would have been adopted by the people at the time it was first submitted to them.

In the special session of the Legislature of 1845 during the debates upon the question of the resubmission of the Constitution to the vote of the people, there was no objection offered to the clause on Corporations in the many speeches that were delivered.

The inevitable conclusion to draw, from a close study of this period, is that the articles on corporations were not an obstacle to the adoption of the Constitution, and that the majority of the people and practically all of the press were not seriously opposed to it.

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[1] November 28, 1844.
[2] November 24, 1844.

CHAPTER VII.

Culmination of the Opposition to Banking.

1. *Petition for a Stock Bank at Iowa City.*

In the special session of 1845, Mr. Downey, the representative of Johnson County, presented the petition of James Robertson and 55 others, praying the Legislature to charter a Territorial Stock Bank, and at the same time, previous notice having been given, introduced[1] No. 31, H. R. File, "A Bill to charter the Bank of Iowa in Iowa City." The bill has not been preserved in the archives of the State, but fortunately the petition has been. This petition clearly states the condition of the times and the feelings of the people, hence it is believed to be worthy of introduction here.

To the Honorable the Council and House of Representatives of the Legislative Assembly, of the Territory of Iowa:

The petition of the undersigned, citizens of said Territory, represent, That in their opinion the inhabitants of the Territory would be greatly benefited, and the interests of agriculture, commerce and manufacture much advanced, by the establishment of a Stock Bank.

Your petitioners are aware that the systems of banking, which were unfortunately adopted in the South and West some years since, has been a tendency to prejudice the public mind against every species of bankpapers; but whatever evils may attend a paper currency, and it must be admitted that there are many, its policy cannot now be regarded as an open question. The State claims and exercises the right of creating Bank Incorporations, and they form and will continue to form a part of our commercial policy; and each new state will be bound in Defence to furnish her own paper currency. The specious plea of the opponents of all banks "that what is wrong in itself can not be made right by considerations of expediency," if

[1] Journal of House, p. 81.

originally good, is not now applicable. A mixed currency is entailed upon us whether it be right or wrong, and it is the part of wisdom to legislate accordingly.

There are in Iowa almost twenty thousand families; each family, on an average, sustains a loss annually of at least two dollars, making an aggregate of $40,000 ! ! The people ought not, and it is to be believed, will not submit, to be thus taxed for the use of a currency they had no voice in creating, and over which they can have no control.

Your petitioners believe that a bank charter can be so framed as to be acceptable to a large majority and eminently useful to all. And herewith submit a plan, in the form of a bill, which they request may be referred to the consideration of a Joint Select Committee of both houses. It has been framed in the spirit of compromise and concession and your memorialists pray that it may be reported and passed without material alteration or amendment. And your petitioners as ever pray.

Among the signers were: James Robinson, Wm. Penn Clark, Alex Grant and Morgan Reno. After the second reading it was referred to a Select Committee by the request [1] of Mr. Downey and was never reported back to the House.

The organ[2] of the Democracy in its issue about the time of the introduction of the bill names it as "a bona fide incipient little monster, projected by our enterprising Whig population, but destined never to receive the animating influence of the Legislature, which is necessary to bring it into vital existence, and give it a local habitation as well as a name."

Commenting further, it enquired if it would not be a "beautiful piece of policy" for a Democratic Legislature to be coaxed into "giving birth to such a vampire upon the body politic," and thus create a "machine" for the swindling of "honest industry" out of its honest earnings for no other purpose, but to support in Iowa a "pampered bank aristocracy." It also saw in this a political scheme, for if a charter was granted, then it would become an "effective weapon" against the

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[1] Journal of House, 7th Legislative Assembly of Iowa Territory, p. 83.

[2] Capital Reporter, May 20, 1845.

Democrats in future political contests in the State. For all the time the Federalists had been crying out for a bank, they had been endeavoring always to "attach the odium of the bank policy" to the Democracy, and if they could be successful in this attempt it would be an available argument for further political contests. In conclusion the writer stated that the consideration of the possibility of the Legislature, as politically constituted, ever granting such a charter, was simply preposterous. The editorial was closed by a sentence which shows with what party feeling the bank question was considered by the radical Democracy of the time: "We bespeak for this hybrid little monster a warm reception, a summary disposal, and a speedy quietus."

2. *Repeal of the Charter of the Miners' Bank.*

(*a*) In the House.

The Seventh Legislative Assembly met on May 1st, 1845; and on the 8th of May Mr. Wilson, previous leave having been given, introduced[1] in the House, No. 2, H. R. File, "A bill to repeal the charter of the Miners' Bank of Dubuque, and to provide for winding up the affairs of the same." This bill was read the first time; and on the succeeding day was read a second time,[2] and referred to the Committee of the Whole for its consideration on May 12th. It was considered in the Committee of the Whole on that day[3] and reported back without amendment. The rules were then suspended, and it was read a third time. The vote on its final passage being unanimously in the affirmative. It was then referred to the Council.

(*b*) In the Council.

It was read for the first time[4] in the Council on May 13th, and after an unsuccessful attempt by Mr. Hempstead to have

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[1] Journal of House, p. 13.
[2] Ibid, p. 24.
[3] Ibid, p. 48.
[4] Journal of Council, p. 33.

it referred to the Committee of the Whole, it was referred to the Committee on Incorporations.

On the next day the Committee on Incorporations submitted its report through its Chairman, Mr. Hempstead.[1]

The report[2] recites that the first section of the act provides for the repeal of the bill incorporating the Miners' Bank of of Dubuque; "and as it had been urged on a former occasion, that the Legislative Assembly of the Territory of Iowa, 'upon its own motion and upon facts which itself fixes upon a strictly legislative bearing,' has no legal authority to repeal the charter of this or any private corporation." The committee then examined and ascertained the powers with which the Legislature was invested. They found power to legislate upon this subject in the 6th section of the Organic Law of the Territory of Iowa which provides "that the Legislative power of said Territory shall extend to all rightful subjects of legislation." Under this provision of the Organic Law they contended that it would be a rightful subject of legislation; but that in addition to this, that it would be "an act of justice to the people of Iowa," many of whom had suffered great loss and injury on account of the mismanagement by the officers of the corporation. As an additional evidence that this is a rightful subject of legislation, it is shown by the 22nd section of the Act of Incorporation that the Legislature in granting the charter has reserved to itself the right "*at any time to annul, vacate* and make void the charter if said corporation should fail to go into operation, or should *abuse* or *misuse* their privileges."

In order to determine whether the corporation had abused or misused its powers and privileges, "and for the purpose of establishing the fact of gross mismanagement and a wanton abuse of the privileges granted," they incorporated in the report the testimony of John T. Fales, Timothy Davis, a director, M. Mobley, Cashier of the bank since June, 1844. This testimony was given before a committee of the House of

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[1] Journal of Council, p. 40.

[2] Ibid, p. 217, et seq.

Representatives in the session of 1843. The testimony as submitted with the report is but an abstract of that given in the majority report of committee of the House, and as the essentials of the testimony have been stated above it is not necessary to insert the abstract here.

The testimony is summed up as showing:

1st. That the corporators have *misused* their charter, because they had perpetrated a fraud upon the people by not paying in the capital stock in accordance with the law of Congress confirming the charter, which provided that no bills or notes should be issued until one half of the capital stock shall have been actually paid in. That until the capital stock was actually paid in by the stockholders in the legal currency of the United States it did not have a legal existence as a corporation. That this was a condition precedent to legal existence; but instead of paying in legal coin of the United States, they gave their own notes and commenced the business of banking. They claimed at that time, and now claim, the right to exercise the corporate privileges conferred upon them in direct defiance of the law granting the corporate existence.

2nd. Persons have been elected directors of the bank who were not bona fide owners of the stock, when the law of Congress, confirming the charter, declares that "the directors shall all be stockholders in the institution." That the law did not contemplate *nominal* stockholders—persons who did not really have an interest or a responsibility in the affairs, who were merely directors for the owners of the bank; but the spirit of the law was that they should be persons who had an interest in the business affairs of the bank through a real ownership of its stock.

3rd. That the bank had suspended specie payment from March, 1841, to July 1st, 1842, and after paying specie for a week "again suspended for a great length of time." This was contrary to the provisions that the bills "obligatory, and of credit, notes and post notes, when *demanded at their* banking house should be paid in *the legal coin of the United States.*"

The refusal to pay specie for its bills was clearly a violation of this provision. As evidence that the suspension of specie payments by banks having similar charters had been considered by the Legislatures of many different States, it was only

necessary to recall the large number of acts legalizing suspension "that had been passed by them in the last few years." And then the committee added—"acts which will stand forever recorded upon their statute books to condemn and disgrace those who passed them."

The Miners' Bank of Dubuque does not deny but what it has so abused and misused its charter by the suspension of specie payments; still its officers had urged that the Legislative Assembly of Iowa does not have the power "to annul, vacate and make void the charter until the acts of forfeiture have been judicially investigated and declared by a court of competent jurisdiction." The rule here contended for by the bank does not hold in that the right is specifically reserved to the Legislature. The committee quote in substantiation of their ground Chancellor Kent: "If a charter be *granted* and *accepted* with that reservation, there seems to be no ground to question the validity and efficacy of the reservation." To hold that forfeiture could not be worked until judicial sanction was given would render inoperative the provision of the charter authorizing the Legislature, under certain conditions, to revoke it. Was it the intention of the Legislature to simply reserve the right for its successors to confirm the decrees of the courts revoking the charter, or to reserve the power to revoke it themselves? The spirit of the charter is to reserve the right to the Legislature to repeal it "whenever they ascertain the conditions of the same to be violated."

The committee deem that under the Organic Law the repeal of the charter is a rightful subject of legislation; that the corporation has abused the provisions of the charter by not paying in the capital stock as provided by law, and by the election of directors with no real interest in the bank, and by the refusal to pay specie, when demanded, for its notes.

On these grounds the committee feel that the charter should be repealed, "that the people of this Territory may not be hereafter injured and defrauded by an institution which has heretofore been so regardless of the law and the interests of our citizens."

The report of the committee was concurred in; and the bill was then read the second and third time and passed[1] by a vote of 12 yeas to 1 nay.

[1] Journal of Council, 7th Legislative Assembly of the Territory of Iowa, p. 40.

On motion two hundred and forty copies of the report of the Committee on Incorporations were ordered printed for distribution.

As shown by the certificate[1] of the Secretary of the Territory, dated May 21, 1845, the act repealing the charter of the Miners' Bank was presented to the Governor on the 15th of May, and after being retained by him for three days, "was returned to the committee from which it was received, without his signature." Under these conditions, by the provisions of the Organic Law of the Territory, the act became a law.

(*c*) Provisions of Bill.

The Judge of the Third Judicial District was authorized to appoint two trustees. These trustees were to have full power to settle up the business of the bank, "to sell and convey the personal and real estate," and also "to collect and pay the debts." They were to have authority to sue for and recover any debt or property of the bank in the name of "The Trustees of said Bank;" after paying the debts and necessary expenses they were to divide the money and remaining property among the stockholders.

Provision was made that the trustees should receive in payment for debts due the bank, the bills of the same at their face value. All real estate was to be sold on a credit of four, eight and twelve months with equal payments. The purchasers were to give a mortgage on the property and also a bond with security, which was to be approved by the trustees. If there were any failures to comply with these requirements within two days after the sale, the property, after giving twenty days notice, was again to be sold; if any loss was sustained as a result of this second sale, the first purchaser should pay the deficiency and the costs.

Before entering upon the discharge of their duties, the trustees were to give a bond in such a sum and with such

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[1] Chapter 31, Laws of the 7th Legislative Assembly of the Territory of Iowa.

security as should be approved by the Judge of the Third Judicial District; and were to be held "jointly and severally responsible to the creditors and the stockholders of said bank to the extent of the property and the effects of the said bank as shall come into their hands."

Any suits pending in the courts of the Territory, of which the bank was a party, should not be discontinued or "in any way effected" by the repeal of the charter, but were to be prosecuted to a final termination by the trustees.

The trustees, on receiving their appointment, were to take possession of the property and make a "complete schedule" of it and file a copy in the office of the clerk of the District Court of "Du Buque" County. The affairs of the bank were to be closed up within a reasonable time, not to exceed two years, unless by special consent of the Judge upon the showing of a good cause. They were to make a final report to the Judge, and to make such reports from time to time of the condition of their trust as he might require. The amount of their compensation was to be fixed by the Judge. The act was to take effect in twenty days after its passage.

3. *Provision for Payment of Debt Due the Miners' Bank by the Territory of Iowa.*

On May 21, 1845, Samuel Murdock of Clayton County introduced in the Council a resolution[1] requiring the Committee on Territorial Affairs to report at an early date how much the Territory is indebted to the Miners' Bank of Dubuque; when the debt was contracted and for what purposes, also as to what means the Territory has for paying the same.

The committee made their report[2] in the form of (No. 55, C. F.) "A Bill to provide for the payment of the debt due to the Miners' Bank of DuBuque." It was read and referred to the Committee of the Whole, and by them reported back

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[1] Journal of Council, 7th Legislative Assembly of the Territory of Iowa, p. 65.

[2] June 4, 1845.

without any amendments, and was finally passed by the Council on June 7th.

The bill as passed by the Council was received in the House and referred to Committee on Judiciary, and was reported back without any amendments on June 9th and sent to the Governor for his signature.

On June 10th, 1845, this act[1] was signed, to provide payment for the long past due account of the Miners' Bank of DuBuque against the Territory of Iowa, which had been contracted under the provisions of the act of the 15th of January, 1841.

By this act the Territorial Treasurer was to give a three months' notice, published in at least two papers in the Territory, and in some one paper in St. Louis and Cincinnati, of a public sale of lots belonging to the Territory on the first Monday in May, 1846.

There were to be enough of these lots sold to the highest bidder, upon 6 and 12 months credit, to pay the debt due to the "Miners' Bank of Du Buque." The purchasers were to make a bond with sureties to secure these payments, and when they were made the Treasurer was to execute a deed for the lots. As soon as these bonds matured the Territorial Treasurer was to collect them and pay the debt.

This act was to take effect after its passage, which was upon June 10th, 1845.

It will be seen by the provisions of this act that notes given to the bank for money loaned could not be paid at the earliest date possible, before May 1847. Six years after they were given and over four years after the last one was due.

4. *Protest Against Provision for Banks in Constitution.*

Before the vote was taken on June 2, 1845, upon the "Bill to submit to the people the draft of a Constitution formed by the late convention," nine members submitted a written pro-

[1] Chapter 18, Laws of the Legislative Assembly of the Territory of Iowa, 1845.

test[1] to its passage. The objections as to boundaries were given and a number of others, including that it would prohibit the Legislature from adopting a system of internal improvements, the creation of corporations for manufacturing and other useful purposes, and that no bank could ever be constituted under it.

They admit that there are provisions for the establishment of State banks under certain conditions, but that the very provisions are a "mockery." The members of the convention must have known that without an alteration of the Constitution "no sane man" would become a stockholder in a bank where he was liable not only to the amount of stock owned, but to an unlimited extent.

But the strongest argument, one that proved to be the true condition of Iowa under the same circumstances later, was that if the citizens of the Territory were deprived of the privileges of banking and the issuing of paper money the inevitable result would be a flood of paper money from the adjoining states of the worth of which but little could be known, and over which the Legislature of this Territory would have no control. It was apprehended that the "annual loss to our citizens" from such a currency would more than exceed the tax necessary to support a State government. "Every tyro in politics knows that the meaner the paper currency, the scarcer will be the precious metals." The adoption of this Constitution would cause an inflow of this depreciated paper money and the consequent disappearance of gold and silver. A little gold and silver would remain, but was sure to become an "article of merchandise," and could be bought of "those consistent advocates of a hard money currency, called brokers or shavers" at the market price "which even now ranges from twelve to fifty per cent."

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[1] Journal of House, p. 167 et seq. The persons signing this protest were: Stephen S. Shelleday, Joseph M. Robertson, Richard Noble, James Anderson, Charles Stewart, N. Munger, Hugh D. Downey, Charles Clifton, and S. D. Woodworth.

5. *Address by Directors of the Miners' Bank "To the People of Iowa."*

On June 16th, 1845, the directors of the Miners' Bank issued an address[1] "To the People of Iowa." This stated that a concise statement for the information of the public of the past history and present condition of the bank had been made necessary by the "strenuous efforts which some people have made, and are now making, to destroy this institution." It was an able, and in the historical part, a fair statement of the bank's position. The legal position taken by it was proven later to be wrong. It was widely circulated over the State and had a considerable influence upon the minds of the people; but this reaction in its favor came too late to be of any service to the bank.

After summarily disposing of the reasons (or rather, the motives) of the persons who had so long pursued the bank with unrelenting hostility, by the statement that these in no way concerned the conduct or the merits of the bank; it then proceeded to discuss the bank's political history. It stated that the charter was granted by a Democratic Legislature and of the nine commissioners, under whom it went into operation, and who, by the provisions of the act of incorporation, were its directors, "a majority were men whose democracy no man dares question."

It went into operation in 1837 at the inception of a great financial panic which resulted in nearly a complete prostration of the business of the country. Within a year many of the merchants and all the banks in the Mississippi Valley had suspended with one exception. It had suffered with the others; but had sustained itself until 1841, several years after every bank West of the Alleghanies, with the exception noted, had suspended. That in 1842 it resumed and paid out specie until a draft had been protested and was forced to suspend again. The statement is made that the first suspension

[1] Executive Document, 1st Sess. 19th Cong., Vol. VIII, 1845-46. Doc. 226, p. 1228.

was the result of an "inevitable participation in a common calamity, rather than from any design to defraud."

The interests of the bank prompted it to pay specie, if possible, during the entire period of this "universal suspension;" for if it could only have accomplished this, the very fact that it was the only bank that had been successful in conducting its business upon a specie basis would have conduced to greatly extend its business, so that its profits would have exceeded those that it could have made by suspending on its then limited business. If it could have gained by fraud the time to have perpetrated it was at the time of the commencement of the general suspension before its specie funds had been exhausted, as it could have refused the specie to the note holders, realized the premium upon it and afterwards refused to resume specie payments. Instead of doing this it exhausted itself of specie in the redemption of notes, and then resumed at the earliest opportunity; and the bank could have sustained the payment of specie if the Territory had paid its debt past due to it, and still unpaid. But the most decisive evidence of the lack of an attempt to commit a fraud is shown by the bank in leaving its property and debts, more than enough to meet the demands against it, exposed to the legal action of its creditors without any attempt of removal or concealment. During this period of second suspension the bank, while not doing any business or making any money, paid off over one-half of the indebtedness against it.

The bank resumed business again in April, 1844, under the present board of directors and cashier, and since that time it had promptly met all of its liabilities. And the claim is made that since that time no charge as to any discrimination, either political or class, can be substantiated, because no preference in any form or shape had been shown.

In discussing the section of the charter as to the provision "that hould the bank fail to go into operation, or should it abuse or misuse its privileges under the charter, the Legislature might annul, vacate and make void the charter," reserving to

itself in this form the provisional right to repeal the charter; there is given an account of the different legal attacks upon the bank, giving the attempts to revoke the charter by the Legislatures of 1842 and 1843. Then follows the account of the suit against the bank in the summer of 1844, when it was sought to close up the bank by a writ of *quo warranto* showing a forfeiture of the charter. In this trial, it is said, that Judge Wilson decided that suspension of specie payments or refusal to pay on demand, "*did not of itself work a forfeiture of charter; that fraud must be combined.*" The statement was made that "the good sense of every man must commend this decision and distinguish between the participation in a common calamity, involving alike corporations and individuals, and a premeditated design to defraud." The suit was withdrawn because of the "conviction that no evidence of fraud could be presented." It seemed to the directors that this inability of the prosecution to find any evidence of fraud should have been enough to have forever settled the question of the revocation of the bank's charter, as there was no more proper place to determine its forfeiture than in the courts which are familiar with law and the weighing of evidence. But before these attacks were made, the Legislature, through two of its committees, had made an investigation of the bank with reference to violations of the charter. There was "no doubt," but that these committees made a thorough examination and had reported the facts to the Legislature, and that the different sessions of the Legislature were satisfied that there had been no violation of the charter. Any wrongs complained of, with the exception of suspension, were done before these examinations took place; and these examinations should be accepted by everyone as better evidence than "the report of Mr. Hempstead" wherein "the mere *opinion* of one or two individuals" is given that the charter had not been complied with in regard to the payment of the stock; that this matter, having been once settled, was final until changed by some mode known in law. "The secret attempt of the Legislature to go behind those reports

is believed to be unprecedented by any body of enlightened men."

The public faith was pledged to continue the charter until 1858; and the "violation of public faith has ever been deemed most disreputable in despotism, how base must it be, then, in a republic, professing to rest upon the virtue of the people and to exist only for their good?"

Because of this lack of ability to show fraud arose the unwillingness to permit the bank to be heard in its defence "before any tribunal." "Every principle of law, justice and honor" demanded that the fraud be shown before the forfeiture of the charter by the Legislature or by the courts, and that the officers of the bank be permitted to appear in its defence. That the session of the Legislature which purported to repeal the charter "called for no evidence, summoned no witnesses." The Legislators were misled by the "members from the North" as to public opinion towards the bank and as a result of this "no ceremony was used at the immolation." And "without trial or witnesses, the victim was condemned to death."

The Constitution was designed not only for the protection of life, but also of property. If the directors of a bank can be condemned without being heard or notified to appear, they are liable at any time to be declared guilty of a higher crime. "Who is safe?"

Granted that misuse and abuse of the provisions of the charter had arisen, this did not empower the Legislature to depute the power to appoint trustees to take charge of the bank property, as no such provisions are found in the charter and they can not seize it any more than they can any farm "without a stipulation to that effect." The property of the corporation did not come into its possession by any legislative enactment, hence it can not be taken away by such enactment. They obtained this property by purchasing the same as a citizen, and hold the same under law. The Territory has no authority over the bank beyond that expressed in the charter,

except the "authority it has over the farm and shop," and that does not extend to the closing up of their business.

"The directors felt perfectly competent" to manage the affairs of the bank; even if it should be "agreeable" to the "trustees in expectancy" to have control of the property for a number of years until it "might suit their convenience to return the remaining property to its owners." The directors felt it their duty towards the stockholders to offer legal resistance to such an illegal attempt. The case may be summed up on their part by the statement that: "The trustees claim the right to take possession of the property belonging to the bank. The directors deny the existence of such a right. Let the courts decide. If the bank should be defeated, it will suhmit."

In the closing sentence the directors leave the whole matter of the right or wrong of the pertinacious attempts of certain persons to destroy the institution and appealed from the prejudice of the past to facts; "from the hostility of the few to the justice of the many; from the condemnation without trial to the right of audience in the sacred precincts of the court room; from the artifices of the demagogue to the integrity of the bench, and the incorruptness of the jury-box."

This report was signed by John Wharton, Timothy Davis, J. P. Farley, Patrick Quigley, Directors, and M. Mobley, Cashier.

6. *Petitions to Congress to Disaffirm the Acts Granting Banking Privileges to Citizens of Territories.*

In January, 1846, after a five years' struggle over the question, the Legislature of Wisconsin repealed the charter [1] of the Wisconsin Fire and Marine Insurance Company, which had been doing a banking business at Milwaukee. The company issued a manifesto claiming that it had in no way violated the conditions of its charter, and as the charter would not expire until 1868, it should still continue its banking business. The charter of the Miners' Bank of Dubuque had been for-

[1] Incorporated February 28, 1839.

feited before this, in 1845, and it had also stated its intention to continue in business.

The persons in both Territories actively opposed to these two banks circulated petitions and forwarded them to Congress, and on February 17, 1846, the Delegate from Wisconsin, M. L. Martin, introduced the following resolution:[1]

"Resolved, That the Committee on Territories inquire into the expediency of disaffirming and annulling every act now in force in either of the Territories of Wisconsin or Iowa, under which individuals or companies claim to have banking privileges." It was referred[2] to the Committee and on May 11, 1846, its chairman, Stephen A. Douglas, reported[3] a bill disaffirming and annulling these charters. It was read and referred to the Committee of the Whole House on the State of the Union and reported from it and passed the House of Representatives on June 9th.[4] In the Senate it was referred [5] to the Committee on Territories and reported back on July 9th, with the recommendation that it do not pass.[6] It was taken up for consideration on August 7th, and after a considerable time spent in debate upon it, was, after several ineffectual attempts, laid upon the table by the close vote of 26 to 24. The reason for this action is found that it was near the close of the session. During the consideration of the bill strong opposition to the principle of the bill had been shown to be held by many of the Senators, and any attempt to force its passage through the Senate would cause a loss of much time, through debate, that was necessary for the transaction of more important business. So the disposal of it was settled by the question of expediency. This was the last attempt by Congress to interfere with the banking question of these Territories, as both of them soon after became States.

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1 Journal of House, 1st Sess. 29th Cong., p. 421.
2 Ibid, p. 782.
3 Ibid, p. 930.
4 Ibid, p. 1123.
5 Journal of Senate, 1st Sess. 29th Cong., p. 341.
6 Ibid, p. 396.

7. *The Closing of the Bank.*

On the 16th day of August, 1845, Judge Wilson appointed Benjamin Rupert and John G. Shields trustees to settle up the affairs of the Miners' Bank of Dubuque; and approved their bonds.[1] The trustees sought to obtain possession of the bank but the directors refused to turn it over; and at the November term of court a suit was brought in the name of the United States by James Grant, relator, which raised the question of the constitutionality of the act that repealed the charter of the Miners' Bank of Dubuque. This case was appealed to the Supreme Court of the Territory of Iowa[2] from the ruling of Judge Wilson in not sustaining the demurrer of the defendants; the ruling of the lower court was sustained.

The case was then tried upon its merits in the lower court and the act repealing the charter of the Miners' Bank was decided to be constitutional. The directors appealed the case to the Supreme Court. It was tried at the July term of 1848 and the decision of the lower court was sustained.[3]

The results of these decisions was to legally put the affairs of the bank in the possession of the Trustees; but in the three years intervening between the passage of the act repealing the charter and the final trial, the affairs of the bank had been settled and it had passed out of existence.

On February 25, 1849, a meeting of the directors was called to close up their connection with the affairs of the bank.

8. *Constitutional Convention of 1846.*

(*a*) Shall the Delegates be Elected by a Party Vote?

The act[4] providing for the Constitutional Convention of 1846 was passed on January 17th, 1846. Immediately after its passage the question of whether the delegates to it should

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[1] Docket B, 3d Judicial District (Dubuque County) p. 444.

[2] Morris Reports, p. 482.

[3] Green's Reports, Vol. I, p. 553.

[4] Chapter 37, Laws of the 8th Legislative Assembly of the Territory of Iowa, p. 31.

be elected as political partisans was agitated. The Whig press was opposed to a Constitutional Convention to which the delegates had been elected by a party vote. As a typical statement[1] of the Whig position, the following from a prominent Whig paper of the times may be taken: "They cling to a party Constitution—and why? Because they think they are in a majority and can carry out their views. If we are right in this assertion, and we believe that we are, they are tyrants. What is tyranny? It is the exercise of authority of the strong against the weak. We draw our inferences and call the actions of our opponents tyranny."

The Whig party claimed[2] that they were not contending for a bank in Iowa, and that they did not demand a Constitution providing for one; but they wished to have this question left open for the consideration of the people that they might determine it later for themselves. They believed that the people had good sense enough to act upon this subject without the necessity of any constitutional restraint to prevent them from doing mischief. Whig conventions, held for the nomination of delegates, did not adopt resolutions in favor of banks.

On the other hand, the larger portion of the Democratic nominating conventions for delegates adopted resolutions instructing the delegates, if elected, to provide a prohibiting clause against banks, and in all cases denouncing them as intolerable nuisances.

(*b*) Resolutions of the Democratic Nominating Conventions.

As a typical example of one of these is a resolution[3] passed by the Democratic mass meeting, held at Fairfield on February 21, 1846; it was: "No bank or other institution is ever to be erected by the Legislature with the power of issuing its own

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[1] Iowa Standard, January 26, 1846.

[2] Bloomington Herald, January 31, 1846.

[3] Resolutions upon this subject are found in the Capital Reporter, March 11, 1846, and succeeding issues.

notes, or the notes of any other bank, public institution or private individual; and a further prohibition against issuing by any individual, or individuals, of bills, checks or promissory notes, or other paper to circulate as money."

If this resolution had been followed it would have kept out of the state much of the "wild cat" banking that abounded in Iowa in the "Fifties," as it would have prevented the circulation of the "Nebraska Bank" money, the issues of the broken Agricultural Bank of Tennessee and of the defunct Talledegah Bank of Georgia.

Two of the resolutions passed at Marion, March 1846, throw light upon the opinion held as to the effect of a circulation of bank paper; they were:

Resolved, that this meeting is opposed to banks and chartered monopolies, believing such institutions to be detrimental to the great mass of the community, by creating a fictitious value upon property, and corrupting to the moral tone of society, by causing men to depend more and more upon loans and discounts than upon industry.

Resolved, that we are opposed to the circulation amongst us of bank notes of other states, believing it to be an evil from which we have suffered much, knowing that where such bills are circulated, specie disappears.

Johnson County, as the seat of government, having within its confines the leading politicians of the party in the Territory, at its convention held on March 14th, 1846, passed the most elaborate and withal the most radical protests against banks, of any of the counties. The three resolutions[1] devoted to banks follow:

7. Resolved, that believing, as we do, that there is gold and silver enough in the world to answer the purposes of a circulating medium, we utterly repudiate the doctrine advanced by our opponents that banks are necessary institutions and promote the public prosperity; and further, that we regard them as the most deadly enemies to the true interests of the laboring and producing classes, and as tending to sap the foundations of our liberties, as vipers warmed in the bosom of

[1] Capital Reporter, March 18, 1846.

the body politic, to sting it to death, as splendid schools for bribery and corruption and as stalking horses for vice and demoralization.

8. Resolved, that a State can not delegate that power to individuals which it does not possess itself; and that, therefore, no bank charter can be granted without a violation of that clause of the Constitution of the United States, which declares that no State shall have power to emit bills of credit or make anything but gold and silver a legal tender for the payment of debts.

9. Resolved, that experience having taught us, that when corrupting money power enters the field against the people's rights and the federal constitution, the latter forms no adequate safeguard to the former, but is trampled under foot with impunity, we are in favor of the incorporation into our constitution of a provision expressly prohibiting the incorporation of banks and other institutions with the power of issuing its own, or the notes of any other institution or individual to circulate as money."

The election of delegates was fought out on party lines.

(*c*) The Constitutional Convention.

The Constitutional Convention of 1846 met at Iowa City on May 4th and continued in session until May 19th. There were thirty-two delegates; of these ten were Whigs and twenty-two were Democrats.

The Committee on Incorporations consisted of Bates, Dible, Grant, Olmstead and Ross, all Democrats. As the result of their labors they made their report[1] upon Incorporations on May 7th; it was as follows:

1. No corporate body shall be hereafter created, renewed or extended, with banking or discounting privileges.

2. The stockholders in all private corporations, except corporations for the purposes of education, charity or religion, shall be responsible in their individual and private capacity for all debts and liabilities of every kind, incurred by such corporation.

3, The Legislature shall have the power to amend, alter or repeal all laws creating private incorporations.

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[1] Journal of Convention, p. 38.

These provisions were in consonance with the political action of the party to which the committee belonged. In the Constitutional Conventions of this year, where that party was in power, we find nearly the same provisions were put in the constitutions—Missouri and Louisiana.

These sections came up for discussion and a motion was made to substitute for the report[1] : "Whereas, all sovereignty resides in the people, and the creation of a corporate body is one of the highest acts of sovereignty, therefore, this Convention conclude, that the people have the right, through their representatives, to grant such corporate privileges as may be deemed conducive to the public good." This was laid on the table until the 12th and was then amended by adding: "or the right to prohibit them altogether through this Convention, their representatives, if they, the people, should deem such prohibition for the public good;" but the amended substitute was lost.

A substitute for the first section[2] was offered in the following form:

1. No corporate body shall hereafter be created, renewed, or extended, with the privilege of making, issuing, or putting in circulation, any bill, check, ticket, certificate, promissory note, or other papers, or the paper of any bank, to circulate as money.

2. Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the Legislature shall provide by general laws for the organization of all other corporations, except corporations with banking or discounting privileges, the creation of which is prohibited. The stockholders shall be subject for such liabilities and restrictions as shall be provided by law.

An amendment[3] to this first section was offered in the form of an additional clause by which the law creating such body renewing or extending its privileges should be published in the newspapers for four months before a general election for

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[1] May 9, Journal of Convention, p. 56.

[2] Journal of Convention, p. 71.

[3] Ibid, p. 72.

county officers and should receive a majority of all the votes cast. It was lost by a vote in which the party lines were quite closely drawn.

A substitute for the first section[1] was then offered by Mr. Dible; it was as follows:

1. No corporate body shall hereafter be enacted, renewed or extended with the privilege of making or issuing or putting in circulation any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any Bank to circulate as money, except the question of Corporation with the law enacting the same, before it become a law, shall have been submitted to a vote of the whole people at some convenient election, the the majority of whose votes shall be deemed a confirmation, of the same.

This was passed by a vote of 16 yeas to 15 nays. This section conferred the power of granting charters for banking purposes and is very similar to the third section of the article on Incorporations in the Constitution of 1844. This change from the ultra anti-bank provision of the report of the Committee on Incorporations was effected by the Democrats who held a conservative position upon the question of banks, uniting with the Whigs in voting for this substitute. After this substitute was passed, the anti-bank men joined with the conservative Democrats and Whigs in placing strong restrictions in any charters that might be granted under the preceding section. For by a vote of 28 yeas to 3 nays there was added as a second section[2] the following:

2. The General Assembly may at any time propose alterations or a repeal of any such corporation that may have been created, and such proposition shall be submitted to the people as provided in the foregoing section, and shall be confirmed in like manner." An attempt to make this still stronger by giving the Legislature the power of immediate repeal met with failure.

In the next morning's session the details of the method of

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[1] Journal of Convention, p. 72.

[2] Ibid, p. 72.

granting charters was provided for[1] in that "No act of incorporation shall be submitted to the people, until the same shall have been published at least twelve successive weeks at least in twelve of the weekly newspapers published in this state, provided, that that number of newspapers are published at the passage of such act, nor shall such publication be made until the party applying shall have deposited with the State Treasurer, a sum sufficient to defray the expenses of such publication."

This was passed by a vote of 25 to 6; the negative votes being cast by the Whigs. An attempt to cut the time of publication in the above amendment down to six weeks was lost by a vote of 4 yeas to 27 nays. The affirmative vote here being all Whigs.

Provision was made for the organization of corporations under general laws[2] by the following: "Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide by general laws for the organization of all other corporations, except corporations with banking or discounting privileges, the creating of which have been already provided for in the foregoing section. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law." Only three votes were cast in the negative upon this question of its passage, and they were cast by Whigs.

The liability clause was changed by adding to the second section: "To double the amount of stock subscribed respectively after the means of such incorporation are exhausted;" and to the second section as amended above there was added: "And no stockholder shall be released from his responsibility by transferring his stock in such corporation to another person." All the Whigs and three Democrats voted in the negative.

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[1] Journal of Convention, p. 75.

[2] Ibid, p. 76.

The motion[1] to postpone indefinitely the report was decided in the negative by a vote of 10 yeas to 20 nays. This, as will be seen, was a strictly party vote, and perhaps the best test that was taken during the session. After this the report was laid upon the table.

At the next morning's session the article on Incorporations was taken from the table and the whole article was struck out by a vote of 24 to 6. The blank was then filled with the sections[2] following:

1. No corporate body shall hereafter be created, renewed or extended, with the privileges of making, issuing, or putting into circulation, any bill, check, ticket, certificate, promissory note, or other paper, or the paper of any bank, to circulate as money.

The General Assembly of this State shall prohibit, by law, any person, or persons, association, or company, or corporation, from exercising the privileges of making or creating paper to circulate as money.

2. Corporations shall not be created in this State by special laws, except for political or municipal purposes, but the General Assembly shall provide by general laws, for the organizing of all other corporations, except corporations with banking privileges, the creation of which is prohibited. The stockholders shall be subject to such liabilities and restrictions as shall be provided by law.

The State shall not be directly or indirectly become a stockholder in any corporation.

These are the words of the article on Incorporations as they finally passed. The only change made by the Committee of Revision was to make one paragraph instead of two out of each section.

Upon the question[3] of its insertion the vote was 21 yeas to 9 nays; only one Whig voting for its passage. The article was then ordered to be engrossed and referred to the Committee on Revision. Mr. Shelleday (Whig) asked leave of the Convention to be excused from serving on the Committee

[1] Journal of Convention, p. 76.
[2] Journal of Convention, p. 85.
[3] Journal of Convention, p. 86.

on Revision, and Mr. Grant (Democrat) was substituted in his place.

Only one additional reference[1] to banks or corporations is found in the proceedings of the Convention, and that is that "No moneys which may be received from any source whatever, for school or educational purposes, or the proceeds thereof, shall ever be loaned to any bank or other incorporated company." This was laid over under the rules.

The article on Incorporations[2] was read a third time, and passed on May 17th by a vote 18 yeas to 6 nays; the negative votes were all cast by Whigs.

The people of the Territory had rejected[3] at the April election of 1845 the Constitution of 1844 by a majority of 996; on its resubmission in August, 1845, it had been again rejected by a majority[4] of 421.[5]

9. *Opposition to the Constitution.*

There was a very great opposition to the Constitution of 1846, especially by the Whigs and the more conservative Democrats. The Whig press was united in its effort to defeat it. The old hostility to the Constitution of 1844, because of the too stringent regulations upon banking was now openly shown. The Iowa Standard[6] in an editorial upon the Constitution says that "The Article upon Incorporation is improved. The former one was a cheat, and so intended. The new Constitution does directly what the other did indirectly. Banking is now prohibited absolutely and flatly. And if the members of the late Convention are not entitled to credit for political sagacity, they deserve some for their boldness. They march right up and make an issue with their constituents; and we trust the people will as boldly meet

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1 Journal of Convention, p. 96.
2 Journal of Convention, p. 102.
3 Capital Reporter, May 10, 1845.
4 Votes from Iowa and Marion Counties missing.
5 Bloomington Herald, September 20, 1845.
6 July 8, 1846.

the question of *Bank* or no *Bank* at the next August election, *by rejecting the whole Constitution*, or if from motives of expediency, they shall deem it advisable to vote for the Constitution, that they will endorse upon their tickets, that they *except the Ninth Article*, which prohibited banks."

Many of the Whig papers advocated that there should have been a provision made for voting upon the disputed question of banks. In the event of the adoption of this Constitution all of them were strong advocates that all minor political differences should be dropped at the next election of members for the Legislature and such members elected as would make provision for its amendment and the settlement of the banking question. Serious objection was made by the Whig papers to this Constitution on account of the difficulty in amending it; it differing from the draft in 1844 by necessitating a Constitutional Convention to amend it, hence if it should be adopted there would be delay in securing reforms in regard to banks.

(*a*) Speech of Wm. Penn Clark against it.

One of the strongest of the many speeches[1] made against the adoption of the proposed Constitution was that of Wm. Penn Clark, delivered at Iowa City. He was opposed to the adoption of the Constitution because it prohibited banks; and that by doing this the people simply disabled themselves. He called attention to the fact that the prohibition of banks was an entirely different thing from the prohibition of bank currency; and that this was not a settlement of the abstract question whether the people of the Territory preferred gold and silver exclusively, or a mixed bank currency. He stated that "The question is narrowed down to the single point, *whether we will have banks of issue of our own, and a currency of our own creation, and under our own control*, or whether we will become dependent upon other States for such a circulating medium; trusting to the solvency and the good

1 Iowa Standard, July 22, 1846.

faith of their institutions, and affording them a market for their issues, without receiving any of the profits of the business. Who can hesitate about deciding this question? If bank paper must and will enter into and become a part of the currency of the State, (and no one can deny that such will be the case so long as the other States have banks and bank paper) common sense dictates that those issues should be subject to the control of our government, and emanate from institutions conducted by our own citizens of whose character and solvency we can know something. It becomes a principle of protection then, and self preservation unites with self interest in demanding that we provide a local currency of our own. Each State acts for itself in this particular, and as we can not control or forbid the action of our sisters, policy and duty dictate that we protect ourselves from the effects of their Legislation. We can only do this by placing ourselves upon an equality with them. If we provide a safe and sound State currency, as they have done, our capital can be employed as advantageously as theirs, and our institutions will act, not only as a check upon their banks, but drive out of our limits the notes of foreign institutions. Banks will draw capital to them, and no country needs the *rhino* more than this. The capital will come from the old States, where it is abundant, locate itself here, pay its proportion of public burdens and become an active instrument in breaking up our prairies. Treading fast in the footsteps of capital comes *population*. The industrious mechanic, the enterprising manufacturer, the hardy laborer, all follow capital. Where money is plenty there labor is amply rewarded, and all classes of society flourish."

(*b*) Democratic Support of Constitution.

The democratic papers were all strong supporters of the Constitution, and strongly opposed banks by showing all the evil effects of bank mismanagement in the past; while for political purposes, they sought to drive the Whig press into

admitting that the Whigs were the party of banks. In making them take this stand they were unsuccessful. They also sought to show that if for no other reason the Whig party would oppose the Constitution because in the framing of it they had not exercised the controlling voice, and that in all probability they would not control the State Government under it. There were some quite strong appeals made to class distinctions by the press of both parties.

On the third of August, 1846, a majority of 456 votes in favor of the Constitution were cast.

10. *The Whig and Democratic Reasons for Ratification.*

The Whigs explained its ratification by the people because they were "anxious to enter the Union," and a small majority of voters were found who voted for it from motives of temporary expediency, believing that amendments could be made before any serious inconvenience could arise from some of the restrictions placed on the Legislature. In the main the Constitution was considered exceptionable; but by removing the facilities for amending it the "hards" had fastened upon upon the people of Iowa the new-fangled policy of an exclusive metallic currency. They urged that no time should be lost in seeking to mend it at the earliest opportunity.

The Democrats pointed to the ratification of the Constitution of 1846 as being the voice of the people on the question of banks and the banking question. And that now the people of Iowa would no longer be swindled by bad bank notes issued within her borders.

The relative ideas of the two parties are shown in the resolution passed at the Democratic Convention for the nomination of State Officers on September 24, 1846, and that of the Whig Convention, passed on September 25, 1846; both conventions were held at Iowa City.

POLITICAL PLATFORMS.

DEMOCRATIC PLATFORM.[1]

Resolved, That the separation of the public moneys from the banking institutions of the country, in the passage of the Independent Treasury Bill meets the approval of this Convention, and the recent vote of the people of this State, adopting the Constitution, is a decisive indication of public sentiment against all banking institutions of whatever name, nature or description.

WHIG PLATFORM.[2]

Resolved, That we regard the adoption of the Constitution at the recent election by reason of the highly illiberal character of some of its provisions as an event not calculated to promote the future welfare and prosperity of the State of Iowa, and that it is our imperative duty to secure its speedy amendment.

11. *The Attempts to Amend the Constitution of 1846, and Adoption of the Constitution of 1857.*

On February 15th, 1847, the House of the First General Assembly passed upon its third reading H. R. File[3] No. 89, providing for the calling of a Constitutional Convention for the amendment of the Constitution of 1846 so as to provide for the establishment of a banking system. On the next day in the Senate the motion[4] to postpone indefinitely was carried by a vote of 10 yeas to 8 nays; one Democrat voting with the Whigs in the negative.

The leading Whig paper[5] commenting upon this stated that the refusal of the Legislature to allow the people to vote for or against the Convention to amend the "Locofoco Constitution" was a bold position to assume; and that it came with ill grace from the party that pretended to be ultra-democratic in their politics. The closing of the editorial is: "But thank God, the people can speak without asking permission of their representatives and in the name of Liberty, we now call upon them to do it. Let every voter at every

[1] Fairall's Handbook of Iowa Politics, p. 18.
[2] Ibid, p. 17.
[3] Journal of House, p. 310.
[4] Journal of Senate, p. 336.
[5] Iowa Standard, March 3, 1847.

election, until their votes are regarded, put upon their tickets, convention or no convention, and let the Judges of Election dare not to certify to them."

A plea[1] made by the friends of the Constitution of 1846 in voting against the above noted amendment was, that it was rejected in consequence of the belief that the people did not demand its passage; for if the people had wanted a Constitutional Convention they would have petitioned for it.

The agitation for the calling of a Constitutional Convention was kept up by the Whig papers during the year of 1847; accompanied in most cases with criticisms of the Constitution and the Democratic party. A typical editorial[2] is, in substance, as follows: "A majority of people are not opposed to banks. When the Constitution of Iowa was framed there happened to be a concurrence of events tending to elevate, in the scale of progressive democracy, the peculiar notions of Fanny Bright, and her subterranean proselytes. The test of Democracy was then, *Free Trade, Hard Money, No Banks, No Corporations.* No Christianity and no anything except *Democracy*, and that progressive.

"The people had been wearied with Territorial vassalage, and they adopted the Constitution, with the express understanding that the fooleries in it were to be expunged as soon as possible. They supposed that the First General Assembly would provide a vote upon it at the first election. They have been disappointed but they will not let another election pass without making "Convention" or "No Convention" a test question, unconnected with Whiggery or Democracy."

The Whig papers,[3] early in the year of 1848, called the attention of the voters to the fact that one of the issues of the August election would be the question of amending the Constitution of Iowa. That this should not be lost sight of and should be considered without reference to political parties.

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1 Iowa Capital Reporter, January 5, 1848.

2 Iowa Standard, September 15, 1847.

3 See Iowa Standard, April 4, 1848, and other Whig papers of this year.

The most important amendment to be proposed was that in regard to corporations which was the work of "Locofocos;" but many of the old school Democrats would have been glad to have had an opportunity to vote for the provision for "Joint stock companies," or to leave the matter to the discretion of the Legislature.

Most of the counties where the Whigs were the predominant party adopted resolutions in the conventions, called for the election of delegates to the State Convention. The resolution[1] passed by the Whig Convention at Farmington, Van Buren county, on the 29th of April, is one of the more conservative ones. It is as follows:

> Resolved, that the Constitution of the State imposed upon the people of this State by the wretched policy of a party preventing as it does and will, the influx of capital and enterprise into our young State and consequently the development of her inexhaustable mineral resources, her great agricultural wealth and manufacturing and commercial facilities is a burden to which the people will not long submit, and that we will sustain no man for the Legislature at the approaching election who will not pledge himself to vote for a law submitting the question to a vote of the people.

There were no resolutions in regard to the question of amending the Constitution passed at either the Democratic or Whig conventions of this year.

By the year of 1849, the question of amendment or no amendment of the Constitution in regard to incorporations had become of enough importance to receive the attention of both parties at their State Conventions.

In the resolution[2] in regard to National affairs, "the paper policy" was decried by the Democratic Convention.[3] In the Whig Convention[4] two resolutions[5] were devoted to the subject. These state "that the welfare and interests of the

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1 Iowa Standard, May 17, 1848.
2 Fairall's Handbook of Iowa Politics, p. 25.
3 Held at Iowa City, June 28, 1849.
4 Ibid, June 30, 1849.
5 Fairall's Handbook of Iowa Politics, p. 27.

people imperatively demand an amendment by which the incubus imposed in some of the provisions of the Constitution upon their resources and prosperity, shall be removed. That the people had a right to demand that the question be submitted to them for their action and if this was not done the people would be recreant to their interests if they do not visit their condemnation upon a party that with professions of Democracy perpetually upon its lips has shown itself in practice to be destitute of the true principles of Democracy."

The Whig Convention[1] of 1850, passed resolutions[2] which were practically but the reiteration of those of the previous year. The Democratic Convention of this year gave no attention to the subject.

The Whigs, at their Convention held at Iowa City, on February 22nd, 1852, stated[3] that they were rejoiced to see their Democratic fellow-citizens in the western states occupying a part of the Whig platform,[4] especially those parts in regard to currency and internal improvements. The opinion of this Convention was that a Convention to revise the Constitution of the State should be called at an early date and it was recommended, with a view of the carrying out of this object, that all State and local candidates, in every part of the State, should make this issue a distinct and strong one before the people.

In consonance with with this, the amendment of the Constitution was made one of the principal issues of the campaign of 1852; it had its effect in the campaign as shown in the inaugural message[5] of Governor Hempstead delivered December 7th, 1852.

While in the Legislature of Iowa Stephen Hempstead had

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1 Held at Iowa City, May 15, 1850.

2 Fairall's Handbook of Iowa Politics, p. 28.

3 Fairall's Handbook of Iowa Politics, p. 32.

4 Constitution of Ohio and the enacting of banking laws by Wisconsin, Illinois and Indiana.

5 Governor's Message, p. 2.

been one of the strongest of the anti-bank Democrats, and he was especially active in the attempts made to close up the affairs of the Miners' Bank. His statements as made in this message were a fair and candid avowal of the position of the larger part of the Democratic party in Iowa at this time; and in fact of the more conservative Democracy of the whole country. Because of this a condensation of his statements upon the subject of banks is given here.

He expressed deep concern, when he saw in looking to the future, a large portion of his fellow citizens in favor of amending the Constitution in such a manner as to permit the establishment of banks. Restrictions incorporated in the Constitution for the purpose of preventing hasty, unjust and unwise legislation and thus protecting the people. The time had now come to study the principles of political economy as connected with the government so as to ward off the approaching evils. Among the first of these evils, he considered the system of banking as it had been and was now being carried on. Having been invested by law with extraordinary privileges they had become a power over the trade, industry, and commerce of the whole country. These banks had three special privileges: "First, to concentrate their capital and credit, and to issue their notes to double and often to triple the amount of their capital; Second, to loan their credit at a high rate of interest; Third, an exemption from the ordinary liability to pay their debts and contracts to which the majority of mankind is subjected." Possessing, exclusively, these powers and privileges by the sanction of the law it was not surprising that the agricultural, industrial and manufacturing industries of the country should be subject to frequent financial convulsions. The failures of the banks of Illinois and other Western States during 1840–41 and the consequent ruin entailed upon thousands could not be forgotten. A number of those states had failed to profit by their former experiences and had recently organized general systems of banking and again the whole Mississippi Valley would be

flooded with a paper currency; and that they might look for another financial convulsion more disastrous than the former. He admitted that a system of banking would serve the purpose of stimulating the hopes and business pursuits of a community during seasons of prosperous credit, and would impart more than ordinary vigor to traffic; but it was always treacherous and had too many uncertainties upon which to risk the fruits of toil and industry of persons who were generally the least able to bear the losses incident to a paper currency. What would be the gain by the establishment of banks and the substitution of a paper currency whose inevitable tendency would be to drive the currency from circulation? The first blast of adversity would sweep the foundations of the business relations of the State away. There was too much paper money in circulation now; it had already driven, to a great extent, the precious metals from the State. "For the purpose of retaining in circulation a sufficient sum of gold and silver to do the ordinary business of the citizen," he urged the Legislature to pass a law prohibiting the circulation of all bank notes of a less denomination than ten dollars; for a law of this character would have a salutary effect in driving out the small notes and to some extent would protect the people from the effects of "Bank Explosions". This forecasting or rather prophecy of the future evil effects of state banks and their paper issues was fulfilled by the crisis of 1857.

The Whig Convention[1] of 1854 passed a resolution[2] which stated that the experience of seven years under the Constitution showed that it was not suitable to the political, agricultural and commercial wants of the State and that it was in direct opposition to "The Spirit of the age." The people needed and demanded an organic law which would make liberal provisions for internal improvements by the State and a banking system so organized and regulated that it would relieve the people from the heavy indirect taxation that they

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[1] Held at Iowa City, February 22, 1854.

[2] Fairall's Handbook of Iowa Politics, p. 37.

had been forced to pay to the banks of other States whose money was in circulation in Iowa.

In his message[1] of 1854, Governor Hempstead recalled the cautions that he had given and recommendations that he had made in regard to State banking systems. He called attention to the fact that although only two years had elapsed yet they found themselves in the midst of a financial crisis. Long lists of suspended and broken banks were found in every issue of the newspapers, that the people who suffered from these broken banks were not "those whose business it was to deal in money and bank paper; and who wield the lightnings of heaven to tell of danger or disasters, but others whose very existence depends upon their labor and who can ill afford to pay the luxury and expense of banking corporations."

"Yet with all the evidence of the pestilential effects of paper money on the necessary confidence between man and man and the industry and morals of the people, the enormous frauds that have been practiced and the losses suffered by toiling millions, we are told that it is necessary to establish a banking system in Iowa." He reiterated the statements in his former message that a banking system had a stimulating effect in times of prosperity; but that it was a system which was always fraught with danger.

He looked upon the system which employed public stocks and securities as the most dangerous of all of the different expedients resorted to for the concealment and mitigation of the errors and evils of the present banking systems; for it was the making of one promise that it might be impossible to redeem the basis of another equally as desperate. He had had no occasion to change the opinions which he had communicated previously to the General Assembly, nor could he discern anything in the condition of the business relations or the positive wants of the community that the Constitution of Iowa should be changed to establish a banking system in Iowa.

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[1] Delivered December 8, 1854. Journal of House, p. 32.

Governor Grimes, coming directly from the people, recognized and stated the wants and demands of the people in his message[1] of Dec. 9, 1854. There could be no doubt, he said, of the wishes and demands of the people in regard to the amendment of the Constitution of the State; and that it would be a waste of time to reproduce the arguments in favor of a change. The amendments could by the terms of the present instrument, be made only by a Constitutional Convention; and the only question for discussion was, "Should the people have the privilege of determining for themselves at the ballot box whether they want revision or amendment at all." No valid excuse could be given against the submission as it would not cause any expense; for in accordance with the terms of the present Constitution it must be settled at a General Election. Consequently a decision against the amendment would cause the State no injury; and if in favor of the revision, "The genuine doctrine of popular sovereignty would be vindicated."

At this session of the General Assembly there was set in motion the machinery to call a constitutional convention that should amend the Constitution of 1846, so that a banking system might be established and also that internal improvements might be made by the state. The result was, the law[2] that gave the permission for the people to vote[3] upon the question of "Convention" or "No Convention," which was carried, and the subsequent meeting of the Constitutional Convention of 1857.

This Convention soon found that the attempt to amend the organic law so as to make it acceptable would be futile and it proceeded to form a new Constitution. In this provision was made that the General Assembly could establish with subsequent approval of the people:

A state bank with branches to be founded upon a specie basis and the branches to be mutually liable for each other's issues.

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[1] Journal of House, p. 45.

[2] Approved January 24, 1855, Laws of Iowa, 1855, p. 115.

[3] On August 16, 1856.

A general free banking law with the restrictions and limitations imposed by Article 8, Section 8 to 12 of the Constitution.

Laws were passed by the General Assembly of 1858 authorizing the establishment of both systems of banking; and were ratified by the vote of the people.

No banks were organized under the "free banking law," but a State Bank was established in 1858, during the closing hours of a serious financial panic and continued in business until it suspended as the result of the National Bank Act in 1863. During this period it was one of the few banks in the United States which did not suspend specie payments and whose notes were always quoted, throughout the land, at par.

Throughout the period from 1846 to the establishment of the State Bank of Iowa—while the political events noted above were taking place, the people of Iowa were experiencing the evil results of a circulating medium composed in the greater part of a depreciated paper money issued under the generally lax laws governing the banking systems of the different states. The West had no Suffolk Bank and with poorly developed markets for her products it followed, as a result of "Gresham's Law," that this State was flooded with some of the worst money of the Union. During this period it was the place of circulation for the notes of discredited banks; the depreciated notes of banks in which the public had partially lost confidence; the worthless notes of "Wild Cat Banks"; and, in rare instances, the notes of solvent banks of the Eastern States or some of George Smith's money. Even these last two were, during the greater part of the year, subject to the discount of exchange in returning them to their respective banks. Gold and silver money was scarce and was either hoarded to pay taxes or to be used as "Land Office Money." Iowa during this period was the experimental ground for several interesting attempts to secure a circulating medium, sufficient to meet the commercial wants of her people. As types of the more important of these there may be cited:

the Nebraska Bank money; the A. J. Stevens money; and the different issues of scrip in cities.

On March 16, 1855, the Nebraska Territorial legislature incorporated the "Western Fire and Marine Insurance and Exchange Company, with the power to deal in exchange which enabled it to go into the "wild cat" banking business as the Western Exchange Bank of Omaha. In the second legislative assembly of Nebraska Territory five banks were chartered. Their charters were all of the same form; their stock was to be either $50,000 or $100,000, to be increased to $500,000 at will; they had power to issue notes and bills for the redemption of which the stockholders were individually responsible; there was no provision for a fixed reserve nor other guard against incompetency or rascality. The bills of three of these banks were circulated to a very considerable extent by the owners of the bank charters who were doing a banking business in this state. The bills away from the places of distribution always circulated at a discount. For a time B. F. Allen kept the money of the Bank of Nebraska at par along the line of the Western Stage Company by making arrangements to have the company receive the bills at par.

A. J. Stevens & Co., of Des Moines, following the plan of George Smith, secured a large amount of bills of the defunct Agricultural Bank of Tennessee, and put them in circulation, guaranteeing their redemption; but the firm failed with a consequent total loss to the bill holders. During the latter part of the period under consideration, cities, towns, companies and individuals commenced the issue of scrip. Over a million dollars of this kind of money was in local circulation in the state. In each case, shortly after its issue, it depreciated from ten to fifty or more per cent.

All of these, as well as the character of the outside money in circulation in the state, aided in bringing about the establishment of a banking system in Iowa for the emission of a paper money that would not have to be circulated at a discount and the character of which could be readily ascertained by the people of the state.

APPENDIX A.

AN ACT to incorporate the stockholders of the Miner's bank of Dubuque.

SECTION 1. *Be it enacted by the council and house of representatives of the territory of Wisconsin*, That a bank shall be established in the town of Dubuque, in Dubuque county, and territory, aforesaid, the capital stock whereof be two hundred thousand dollars, to be divided into two thousand shares of one hundred dollars each, and the subscriptions towards said stock shall be opened as soon as may be convenient, after this act shall be approved by the congress of the United States. The subscription shall be opened in the said county, and at such other places as the commissioners may think proper, and be kept open until the stock is subscribed, under the superintendence of Ezekiel Lockwood, Francis Gehon, John King, William Myers, Lucius W. Langworthy, Robest D. Sherman, William W. Corriell, Simeon Clark and E. M. Bissell, who are hereby appointed commissioners, to receive the subscriptions to the said capital stock, and the said commissioners shall be the first directors; they shall choose one of their number for president and they shall give at least thirty days notice of the time and place of opening said subscription, in one or more newspapers printed in said county, and they shall hold their offices until the first election for president and directors takes place.

SECTION 2. The commissioners shall proceed to distribute the capital stock of the said corporation, among the subscribers thereto, and in case there shall be subscriptions for more than the amount of such stock, within the first three days that the books are opened, it shall be the duty of the commissioners to apportion the same among the subscribers thereto in rateable proportion, to the amount subscribed by the respective individuals; but in case the whole of the capital stock shall

not have been subscribed at the expiration of the three days, the commissioners shall continue the books open as long as they may deem necessary, to have the whole of the remaining shares subscribed.

SECTION 3. That one tenth of the amount of each share, shall be paid to the said commissioners at the time of subscribing, and the balance shall be paid in such instalments, and at such times as the directors or a majority of them, for the time being, shall direct and appoint: *provided*, that whenever the payment of any instalment is required by the directors, they shall give at least ninety days notice thereof, in a newspaper, printed in the county, if there should be any published at the time; if not, then in the newspaper published in the territory the nearest to the said bank, but no one instalmeut shall exceed ten dollars on each share.

SECTION 4. All such persons as shall become stockholders of said bank, shall be, and are hereby ordained, constituted and declared to be, until the 1st day of May, which will be in the year of our Lord 1857, a body corporate and politic, in fact and in name, by the name of the president, directors and company of the Miners' bank of Dubuque, and by that name, they and their successors shall and may have continual succession during the term aforesaid, and shall be persons in law capable of suing and being sued, pleading and being impleaded, answering and being answered unto, defending and being defended in all courts and places whatsoever, and they and their successors may have a common seal, and may change and alter the same at pleasure; and they and their successors, by the name of the president, directors and company of the Miners' bank of Dubuque, shall be in law capable of purchasing, holding and conveying any estate, real or personal, for the use of said corporation: *provided*, that it shall not be lawful for the said corporation to hold real estate for an amount exceeding one-tenth part of the capital stock actually paid in, excepting, however, the banking house and lot necessarily appurtenant thereto.

SECTION 5. The stock, property, affairs and concerns of the said corporation, shall be managed and conducted by a board of seven directors; the said directors shall all be residents and citizens of this territory; they shall choose one of their own number to be president, who shall hold his office, as also shall the directors, for one year, and until others are duly chosen. The directors shall all be stockholders in this incorporation, and they shall all be elected on the 1st Monday in October annually, at the banking house of said stockholders, and public notice shall be given in some newspaper published in the territory, at least sixty days previous to holding said election; and the said election shall be held and made by such of the stockholders of the said bank, as shall attend for that purpose, either in person or proxy, which proxies shall only be to stockholders, or to the cashier of the bank, and the pluality of votes shall be sufficient for a choice; and the said directors chosen at such election, as soon as may be thereafter, shall proceed in like manner to elect one of their number to be president. And if any director shall cease to be a stockholder, his office shall be considered vacant, and when any vacancy shall happen among the directors, by death, resignation or otherwise, such vacancy shall be filled for the remainder of the year, by the remaining directors, for the time being, by the election of one of the stockholders.

SECTION 6. That in case it shall happen that an election of directors shall not be made on any day when pursuant to this act it ought to have been done, the corporation shall not for that cause, be deemed to be dissolved, but it shall and may be lawful on any other day, to hold and make an election of directors, in such manner as shall have been regulated by the laws and ordinances of the said corporation.

SECTION 7. That the directors for the time being, or a majority of them, shall have power to make and prescribe such by-laws, rules and regulations, as to them shall appear needful and proper, touching the arrangement and disposition of the stock, property, estate and effects of said corporation,

the duties and conduct of the officers, clerks and servants, employed therein, the election of the directors, and all such other matters as appertain to the business of the bank, and shall also have power to appoint so many officers, clerks and sevrants for carrying on the business of said bank, and with such salaries as to them shall seem meet: *provided*, that such by-laws, rules and regulations be not repugnant to the constitution or laws of the United States, or the laws of this territory; and it shall be the duty of the president and cashier, whenever thereto required by the legislative assembly of this territory, to furnish to them a statement, under oath or affirmation, of the condition of the bank, stating the amount of the deposits, the profits on hand, the amount of bills in circulation, the amount of debts due from the directors and stockholders, the amount due from other persons or corporations not however naming them, the amonnt of specie in bank, the amount of bills of other banks, the amount of their deposits in other banks, the amount of their real estate, and of other property, not therein specified, the amount of capital actually paid in, and shall contain the true exhibit of the real state of said bank.

SECTION 8. That the total amount of debts which the said corporation shall at any time owe, whether by bond, bill, note, post note, or other contract, over and above the specie then actually deposited and contained in the bank, shall not exceed three times the sum of the capital stock subscribed and actually paid into the said bank; and in case of excess, the directors under whose administration it shall happen, shall be liable for the same in their separate and private capacities: *provided*, the bank shall not be able to pay its liabilities; *and provided, also*, that this shall not be construed to exempt the said corporation, or any estare, real or personal, which they may hold as a body corporate from being also liable for, or chargeable with such excess; but such of the directors as were absent when the said excess was contracted, or who may have dissented from the resolution or act whereby the same was contracted, shall not be so liable.

SECTION 9. That the lands, tenements and hereditaments, which it shall be lawful for the said corporation to hold, shall be only such as shall be required for its accommodation, in relation to the convenient transacting of its business, or such as shall have been *bona fide* conveyed to it in satisfaction of debts previously contracted in the course of its dealings, or purchased at sales upon judgments which shall have been obtained for said debts; and further, the said corporation shall not, directly or indirectly, deal or trade in purchasing or selling any goods, wares, or merchandise, unless in selling the same when truly pledged by way of security, for debts due the said corporation, or purchasing the same at sales on judgments, which shall have been obtained for any debts previously contracted in the course of its dealings, and afterwards selling the same.

SECTION 10. That the bills obligatory and of credit, under the seal of the said corporation, which shall be made to any person or persons, shall be assignable by endorsement thereon, under the hand or hands of such person or persons, his, her or their assignee or assignees, so as absolutely to transfer and vest the property thereof, in each and every assignee or assignees respectively, and to enable such assignee or assignees, to bring and maintain an action thereupon, in his, her or their own name or names, and bills or notes, which may be issued by order of said corporation, promising the payment to any person or persons, his, her or their order, or to bearer, though not under the seal of the said corporation, shall be binding and obligatory upon tho same, in like manner and with like force and effect, as upon any private person or persons, if issued by him, her or them, in his, her or their private or natural capacity or capacities, and shall be assignable and negotiable in like manner, as if they were issued by such private person or persons; and all such bills, obligatory and of credit, and such bills, notes and post notes, issued as aforesaid, shall be paid by the said corporation, when demanded at their banking-house, in the legal coin of the United States.

SECTION 11. Each stockholder shall be entitled at elections, and on all other questions, to one vote for every share for ten shares; and for every ten shares above that amount, shall be entitled to one vote only; and no stockholder unless actually resident within the United States, shall vote at elections, or on any other occasion by proxy.

SECTION 12. That the directors, before they execute any of the duties of their offices, except choosing a president, shall severally take an oath or affirmation, that they will faithfully, diligently and honestly perform the duties of their respective offices, according to the best of their skill and abilities, which oath or affirmation either of the directors is hereby authorized to administer to the president, or any other director, and to all such officers, clerks and servants of said corporation, as by the by-laws and ordinances thereof may be required to take an oath or affirmation.

SECTION 13. That the directors, shall make half-yearly dividends of so much of the profits of said bank, as to them or a majority of them shall seem advisable, and every cashier and clerk, before they enter upon the duty of their offices, shall give bond with security to the satisfaction of the directors, conditioned to the faithful performance of their duties.

SECTION 14. A majority of the directors shall constitute a board for the transaction of business; for making ordinary discounts, such a number of directors shall constitute a board, as shall be required by the by-laws of said corporation.

SECTION 15. That a general meeting of the stockholders may be called, whenever a majority of the directors shall judge proper; of which meeting the directors shall give three weeks' previous notice in a newspaper printed in the county.

SECTION 16. That the stock of said corporation shall be assignable according to the rules prescribed in the by-laws of said corporation, but no assignment or transfer shall be valid or effectual, until such assignment or transfer shall be entered or registered in a book to be kept for that purpose, nor shall any stockholder be capable of assigning or transferring his or

her stock in the said bank, until all his or her notes, debts, dues and endorsements of whatever nature, due or becoming due to the said corporation, shall be first paid and discharged.

SECTION 17. That the stockholders may at any time augment the capital stock of the said bank, at any special meeting called for that purpose, a majority of all the votes being given therefor, under such regulations, restrictions and conditions as the stockholders shall at such meeting judge proper, to any amount not exceeding five hundred thousand dollars.

SECTION 18. That the property of every individual member of the said corporation, vested in said corporate funds, shall be liable in the same manner as other personal property is liable by the laws of the territory, to the payment and satisfaction of his just debts to any of his bona fide creditors, and when any execution shall be issued against the personal property of any such individual member, and the creditor is desirous that the same should be levied upon the property of such debtor in the said corporate funds, the officer to whom such execution may be directed, shall levy the same by leaving with the cashier of said bank an attested copy of said execution and a written notice that the said execution is levied upon the property of the said debtor in the said and such property thus levied upon, shall be sold in the corporate funds; same manner as is or shall by law be provided for the sale of personal property taken on execution, and such corporate funds thus levied upon and sold shall be transferred to the purchaser by entry in the proper book of such corporation; a copy of the said execution, and a statement of the sale of such property by virtue thereof; which entry the officer serving such execution shall be permitted to make: *provided*, that no property vested in the said corporate funds, shall be taken and sold until all the debts due, or becoming due to the said bank, by such debtor, whether as a drawer or endorser or surety, shall be fully paid and discharged; and upon any execution being levied on any shares in said bank, it shall be the duty of the cashier of said bank, to expose the

proper book of the corporation to the officer; and to furnish him with a certificate, under his hand, in his official capacity, stating the number of shares the debtor holds in said bank and the amount of dividends declared and due thereon.

SECTION 19. That the said corporation shall not take more than seven per cent. per annum on its loans and discounts, in advance.

SECTION 20. That no note or bill shall be issued by said bank, of a less denomination than five dollars, and that the bank shall not issue any bill or note until the sum of forty thousand dollars in the legal coin of the United States shall be paid into the said corporation by the stockholders, as a part of the stock: *provided*, that nothing herein contained, shall be construed to deprive the legislative assembly, in four years from this time, from prohibiting the issuing of notes from this bank of a less denomination than ten dollars, or in ten years from this time, of a less denomination than twenty dollars, if the legislative assembly should deem it expedient to do so.

SECTION 21. In case any subscriber to the stock of this corporation, shall fail to pay any instalment called for, as is provided in section third, his or her stock shall be forfeited, with what may have been paid upon the same, to the corporation: *provided*, the same be not paid (with the interest thereon, at twelve per cent. per annum) within ninety days after the time when it is due, agreeable to the notice of the commissioners or directors for said installments.

SECTION 22. No one director shall be permitted at any one time to become indebted to the bank by loans, endorsement or otherwise, to an amount exceeding five thousand dollars.

SECTION 23. That this act be and the same is hereby declared to be a public act, and that the same be for the time herein before limited, construed in all courts and places benignly and favorably, for every beneficial purpose therein mentioned: *provided*, that if said corporation shall fail to go

into operation, or shall abuse or misuse their privileges under this charter, it shall be in the power of the legislative assembly of this territory, at any time, to annul, vacate and make void this charter.

P. H. ENGLE,
Speaker of the house of representatives.
HENRY S. BAIRD,
President of the council.
H. DODGE.

Approved, Nov. 30, 1836.

APPENDIX B.

Bibliography.

Primary Authorities.

Congressional:

Executive Documents from 1836 to 1846.

Reports of Secretary of the Treasury from 1836 to 1846.

Finance Reports, 1876, and 1879.

Journal of House of Representatives, 1846.

Journal of Senate, 1846.

Report of Financial Condition of the United States, 1855, 1858, 1861.

State:

Journal of House of Representatives of Iowa Territory, First, Second, Third, Fourth, Fifth, Sixth and Seventh Sessions.

Journal of Council of Iowa Territory, First, Second, Third, Fourth, Fifth, Sixth, and Seventh Sessions.

Governor's Messages from 1836 to 1858.

Session Laws from 1836 to 1858.

Journal of Constitutional Convention, 1844.

Journal of the Constitutional Convention, 1846.

State Supreme Court Reports, cited.

Miscellaneous:

Council and House Journals of Wisconsin Territory for 1837, 1838, and 1839.

Session Laws of Different States, cited.

United States Supreme Court Reports, cited.

Mississippi Supreme Court Reports, cited.

Indiana Supreme Court Reports, cited.

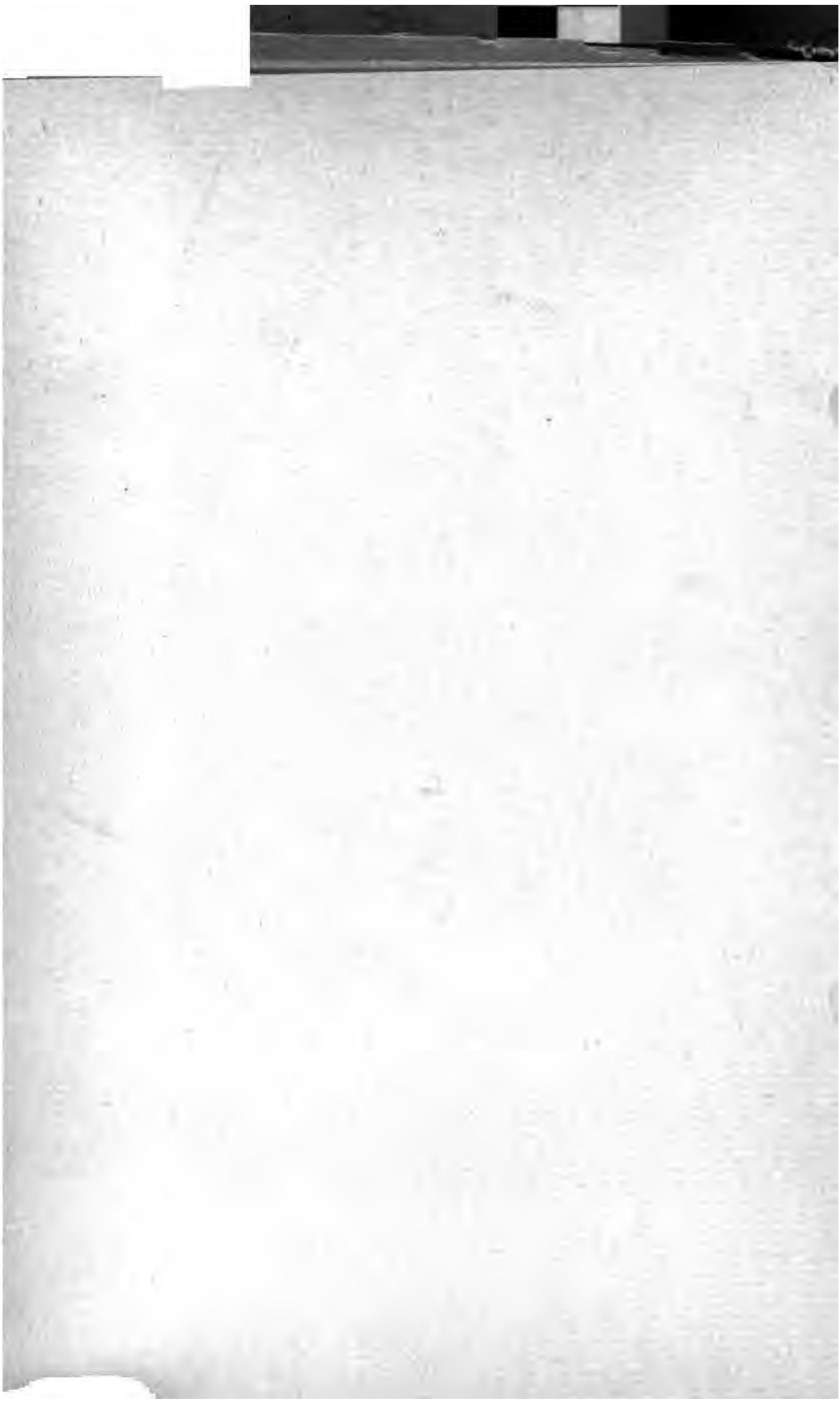
Court Records of Dubuque County from 1836 to 1848.

Governor's Messages of Different States, cited.

Secondary Authorities.

Iowa Capital Reporter, 1841, '42, '43, '44, '45 and '46.

Iowa Standard, 1840, '41, '42, '43, '44 and part of '45.
Bloomington Herald, 1840, '41, '42, '43, '44, '45, and '46.
The Dubuque Visitor, 1836-37.
The Iowa News, 1837, '38, and '39.
Burlington Hawkeye, 1840 and 1841.
Ohio Statesman, 1844.
Cincinnati Globe, 1844.
Indiana Sentinel, 1844.
Dubuque Miners' Express.
Gouge's Journal of Banking, 1841 and 1842.
Raguet's Financial Register, 1837 and 1839.
Hunt's Merchants Magazine from 1837 to 1858.
Niles Register from 1837 to 1850.
Bankers' Magazine, Vols. 7-20.
Rhodes' Journal of Banking.
BAKER, H. F., Banks and Banking in the United States, 1854.
Blodgett's Economica.
BOLLES, A. S., Financial History of the United States, 3 vols.
BURRIE, S., Annals of Prairie Du Chien.
CAREY, M., Essays on Banking, Philadelphia.
ELLIOTT, J., Funding System of U. S. Senate Doc., 1845.
Fairall's Handbook of Iowa Politics.
FISH, T., The Banking Bubble Burst, Charleston, 1837.
GALLATIN, A., Considerations on the Currency and Banking System of the United States, Philadelphia, 1831.
Suggestions on the Banks and Currency of the Several United States, N. Y., 1841.
GOUGE, W. M., Short History of Money and Banking in the United States, Philadelphia, 1833.
KNOX, J. J., United States Notes, N. Y., 1884.
RAQUET, CONDY, Inquiry into the Causes of the Present State of the Circulating Medium of the United States, Philadelphia, 1815.
Treatise on Currency and Banking, Philadelphia, 1839.
TUCKER, A. V., History of Banking, Richmond, 1839.
WHITNEY, D. R., Suffolk Bank, 1878.



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THE POLITICAL IDEAS
OF
MODERN JAPAN

BY
KARL KIYOSHI KAWAKAMI, A.M.

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THE POLITICAL IDEAS
OF
MODERN JAPAN
AN INTERPRETATION

PREFACE

It is my first duty, as well as my greatest pleasure, to explain that this monograph was prepared in partial fulfillment of the requirements for the degree of Master of Arts at the State University of Iowa. My major work in this University was in Political Science under the direction of Professor Benjamin F. Shambaugh. I was at the same time studying Sociology and Political Economy under Professor Isaac A. Loos.

The preparation of this monograph was first of all suggested by the absence in foreign libraries of a literature dealing with the Politics—especially the political ideas—of modern Japan. The economic phenomena of modern Japan have been much written about in foreign languages,[1] but the domain of political thought has been left singularly untouched. Dr. Iyenaga's *Constitutional Development of Japan*, and Mr. H. Furuya's *System Représentatif au Japon* (Bruxelles, 1899) are, so far as I am aware, the only works of the kind published in English and French respectively. Admirable as are these works, these authors do not discuss the development of political ideas which wrought out marvelous changes in modern Japan. That such an important and interesting subject as the political ideas of a nation, which is now steadily coming to the front in the arena of the international rivalry, has been ignored, is a matter of profound regret. The modest ambition of the author of this monograph is to break the ground with the hope of directing attention to a hitherto uncultivated field.

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[1] Of the many works presenting the economic phases of Japan the following are worthy of special reference: T. Fukuda, *Die Geselschaftliche und Wirtschaftliche Entwicklung in Japan;* Y. Ono, *Industrial Transition of Japan*, in the Publication of the American Economic Association, Vol. V; J. Soyeda, *A History of Banking in Japan*, in A History of Banking in all the Leading Nations; S. Tanaka, *Geschichtliche Betrachtungen uber den Geistigen Verkehr Japans mit dem Auslande;* Y. Kinoshita, *The Past and Present of Japanese Commerce.*

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CORRIGENDA

1. Page 2, foot-note, for *The Religion of Japan* read *The Religions of Japan*.
2. Page 33, foot-note 2, for *chs. VII and VIII* read *chs. VII and XIII*.
3. Page 12, line 9, for *environmental theroy Bondin*, read *environmental theory Bodin*.
4. Page 35, for *goniu kumi* read *gonin kumi*.
5. Page 39, line 10, and page 46, line 7, for *piety* read *benevolence*.
6. Page 52; line 15, for *anwered* read *answered*.
7. Page 57, line 20, for *trial* read *triad*.
8. Page 61, foot-note 3, for *teu* read *ten*.
9. Page 62, line 15, for *won* read *on*.
10. Page 62, line 27, and page 67, line 26, for *filial piety* read *benevolence*.
11. Page 70, foot-note line 4, for *doctrine so as to meet* read *doctrine as to meet*.
12. Page 71, line 27, for *that* read *the*.
13. Page 79, line 17, for *ennervated* read *enervated*.
14. Page 80, foot-note 1, for *the career of Christianity* read *the early career, etc.*
15. Page 98, line 26, for *divise* read *devise*.
16. Page 87, foot-note 1, for *Easterners* read *Westerners*.
17. Page 100, line 12, for *liberal party* read *liberal school*.
18. Page 104, line 30, for *now President* read *formerly President*.
19. Page 107, line 17, for *at least* read *at last*.
20. Page 108, line 23, for *conflict* read *trouble*.
21. Page 112, line 28, for *resul* read *result*.
22. Page 112, line 29, for *1880* read *1881*.
23. Page 116, line 15, for *adaptable* read *adapted*.
24. Page 119, line 17, for *in that* read *that in*.
25. Page 149, line 5, for *far reaching* read *far-reaching*.
26. Page 158, foot-note 2, line 3, for *Liberty Party* read *Liberal Party*.

CHAPTER I

THE ORIGIN OF THE JAPANESE NATION

§ 1. It may appear to some that the remote origin of the Japanese nation is of small importance in a discussion of the development of political ideas in modern Japan. Nothing, however, is more misleading than such a conception. Stages of social and political development are so intricately interrelated that to overlook any one of them is to destroy the key which enables us to open the secret of universal progress. The human world does not change in a single day, but developes slowly step by step and stage by stage. No nation has reached the heights of civilization without first climbing the foot-hills. "There lies the programme of the world from the first of time, the instrument, the charter, and still more the prophecy of progress."[1]

To ascertain the origin of the Japanese nation is, however, a task of no small difficulty. The history of our primitive ancestors is yet unrevealed. There have appeared as yet no great scholars whose investigations have thrown much light upon this subject. Until recently our historians have satisfied themselves with simply narrating battles and the heroic deeds of warriors, with describing the lives of martyrs and statesmen, and with setting forth mythological traditions in reference to the beginnings of our people.[2] This infancy of historical study is, however, a matter of no wonder when it is remembered that our first university, established by government according to the Western system, is still under twenty years of age. Naturally the modern methods of historical research are quite new.

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[1] Drummond, *Ascent of Man*.

[2] Flint, *The Philosophy of History*, p. 47.

But the historical scholars of Japan are no longer satisfied with the old school. They are endeavoring to penetrate the pathless region of the mythological period of our history guided by the compass of modern science. Nevertheless, up to the present time no valuable contribution has been made concerning the origin of the Japanese people. In studying the origin of a nation, the scholar should be equipped with a knowledge not only of history proper, but he should also have at his command the data of such studies as Anthropology (including Ethnology, Archæology, Craniology) Sociology, and Philology. Unfortunately these studies have not been especially developed in Japan, so that few scholars have as yet been able to use their data in the study of Japanese history.

Turning to the foreign literature on the primitive races of Japan one finds very little that is reliable. Obscure and isolated until recently, Japan had so long escaped the study of Western scholars that no accurate knowledge of her earliest history was preserved. Thus, any attempt to investigate the origin of the Japanese race is confronted with manifold difficulties.

§ 2. The comparatively authentic history of the Japanese nation goes back to about the middle of the seventh century B. C. It is, however, the purpose of this chapter to investigate into the prehistoric races of Japan. At the beginning of the eight century of the Christian era, a book entitled *Kojiki*, or *Book of Ancient Traditions*, was compiled.[1] It is the oldest record now extant, and contains many mythological traditions concerning the primitive state of the aborigines. From this and traditional records written subsequently, and from various articles lately excavated in different districts, it

[1] Professor Basil Hall Chamberlain translated into English the whole of the *Kojiki*, and furnished it with learned commentary and notes. He says: "The shocking obscenity of word and act to which the 'Records' bear witness is another ugly feature which must not quite be passed over in silence. It is true that decency, as we understand it, is a very modern product, and it is not to be looked for in any society in the barbarous stage."— Griffis, *The Religion of Japan*, p. 66.

is inferred that the Japanese race was the outgrowth of a mixing of various stocks.

The first inhabitants of Japan were probably Pigmies, who lived in hill-sides and vaults along the coast of the Pacific Ocean and the Sea of Japan. This thesis, maintained by Professors Koganei and Tsuboye, of Tokio Imperial University is based upon the results of excavations and upon traditions compiled in the Kojiki and other records. How many years ago and whence this small race came to our land is a matter of conjecture. They were the race of the neolithic or, perhaps, of the palæolithic stage. Before this assertion becomes established, however, it must be subjected to much more discussion and investigation. Yet there are reasons for supporting Professor Koganei's opinion. Putting aside all inferences from excavations and Japanese legends, let us turn to a great authority concerning the Pigmies, a race which lived, it is asserted, in different parts of the world in a remote antiquity.

In his volume on *The Pygmies*[1] de Quatrefages, late Professor of Anthropology at the Museum of Natural History of Paris, says, in regard to the small people of the ancient Philippines and Java: "When the Spaniards began to settle the Philippines they met, in the interior of Luzon, by the side of the Tagals of Malay origin, dark men of whom some had smooth hair, while others possessed the woolly headcovering of the African Negroes. These last alone were true blacks, whom the conquerors called Negritos del monte (little Negroes of the mountain) on account of their remarkably little stature and their habitat. The local name of Aigtas or Inagtas, which seems to mean blacks, and from which is derived that of Aetas, is generally adopted.....I have remarked that in this maritime world Sumatra and Java are the only large islands where they (Negritos) have left no other traces

[1] The American translator of the book, Frederick Starr, recommending the author says: "No man has done more than he to further anthropological study in France; no man was more respected than he over the whole of Continental Europe; no European anthropologist's works have been more widely read in America."

than some doubtful mixed breeds and the remains of an industry which appears not to have passed beyond the age of stone. It is in Java that the destruction has probably been the most sudden and complete."[1]

Passing further north, de Quatrefages notices the primitive Pigmies in Japan and other adjacent islands as follows: "On the north, Formosa is the last place where the race of which we speak has preserved all its characteristics; but it reveals its ancient existence beyond this island by the traces it has left among the present populations. In the little archipelago of Loo-Choo (Riu-Kiu),[2] Basil Hall Chamberlain found at certain points 'some men very black by the side of others who were almost white.' Ancient traditions in Japan speak of formidable black savages who were subdued and driven away only with great difficulty."[3]

Whether or not the Negritos of de Quatrefages are the same as, or related to, Professor Koganei's small people remains for futher investigation. Nevertheless, it seems almost certain that Pigmies of some sort or other peopled the islands of Japan at a time long before the dawn of the historic age. Notwithstanding de Quatrefages' remark[4] that these Negritos of the North were not exterminated as in Java, we are not able today to perceive so much as a trace of this primitive

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[1] De Quatrefages, *The Pigmies*, pp. 25–26.

[2] The correct name of the islands is Riu-Kiu.

[3] De Quatrefages, *The Pigmies*, p. 27.

[4] "Kempfer and Siebold have reported the differences in color and hair which certain classes of the population present, and the latter mentions particularly the black color and the more or less crinkly hair of the inhabitants of the southeast coast. Long since, I mentioned these characters as confirming the opinion first propounded by Pichard relative to the intervention of a black element in Japan, and this element can only be referred to the Negrito race. The examination of a Japanese skull from the Broca collection has fully confirmed these conclusions. Studied by Hamy and myself, it has presented a mixture of features, of which the most characteristic clearly betray this ethnic origin. The details given by Dr. Maget have fully confirmed these conclusions. He has discovered and described veritable *Negrito metis* living in the midst of Japanese populations."—De Quatrefages, *The Pigmies*, pp. 27–28.

stock so far as the people of Japan proper are concerned. In Riu-Kiu and Formosa, our new territories, we may perhaps recognize to a greater or less degree a certain relation to those early peoples, as the prominent French anthropologist has pointed out. That the races who first peopled Japan were extraordinarily short in stature has been shown by the smallness of the vaults recently found and alleged by scholars to have been the habitations of the prehistoric folk, as well as by the evidences handed down through folk-lore.

For how long a period this short-statured race had existed in Japanese islands before stronger savages came to subjugate them, is not definitely known. Whence they came, where they went,[1] how they disappeared, are questions no less obscure. It may, however, safely be said that the first inhabitants gradually disappeared before a superior race of newcomers, just as the American Indians are disappearing before the Anglo-Saxons.

§ 3. It is almost unanimously maintained by Japanese scholars that the second race which inhabited Japan was that now known by the name of Ainu. As to the original abode of the Ainus, the scholars are, however, still in darkness. Some locate it in a cold region of the North—say Siberia, Saghalin, or Yezo—while others hold that this race came from the warm islands of the South. In the preface to his valuable book, *The Mikado's Empire*, Dr. W. E. Griffis says: "I am inclined to believe that India is their original home; that the basic stock of the Japanese people is Ainu, and in this fact lies the root of the marvellous difference in the psychology of the Japanese and their neighbors, the Chinese." But he does not seem sure of his own opinion; for in another connection he says: "It seems most probable that the savages

[1] Professor Koganei, of Tokyo University, insists that these Pigmies, attacked by a superior race now called Ainu, gradually retired to the North, and finally crossed over to Siberia and America by the way of Yezo, Saghalin, and other islands. He is bold enough to say that they were the ancestors of the present Esquimos.

descended from the North, tempted South by richer fisheries and a warmer climate, or urged on by successive immigration from the continent."[1] Here Dr. Griffis seems, if I am not mistaken, to refer to the Ainus as "savages," and so repudiates his opinion as set forth in the preface. Many books have been written on the Ainus both by the Japanese and by foreigners;[2] but such writers are satisfied with simply describing the Ainus as they are today. According to Professor Keane, the Ainu is one of the offshoots of the Homo Caucasicus.[3] I myself am inclined to support the view of the southern origin of the Ainu for three reasons. First, if the conquered Pigmies fled to the North, as Professor Koganei points out, it is not probable that the conquering Ainus came from the cold region, since it can hardly be imagined that the former dared to withdraw to the same place from which the latter came. Secondly, it seems most probable that the original home of the whole human race was in the region stretching from Java to southern England. In this region the development of the human species was slowly wrought out through the modifications of brain and form, which probably covered thousands of years.[4] Thirdly, the shores of Japan

[1] *The Mikado's Empire*, p. 27.

[2] Among these foreigners Captains Bridgeford and Blackiston, Messrs. Ernest Satow and Savage Landor are conspicuous. Mr. Landor's work, *Alone with the Hairy Ainu*, is the result of a journey of some 4200 miles in Yezo, and contains the most elaborate description of the Ainus as yet published.

[3] Professor Keane says: "Although now confined to Yezo, part of Sakhalin and the southern members of the Kurile Archipelago, their [Ainus'] territory appears to have formerly comprised a great part, if not the whole of Japan, besides large tracts on the opposite mainland. In the national traditions there was a time when they could look out on their watery domain, and exclaim: 'Gods of the Sea, open your divine eyes. Wherever your eyes turn, there echoes the sound of the Ainu speech,' a speech now current amongst scarcely 20,000 full-blood and half-caste survivors of this remote Asiatic branch of the Caucasic division. Despite the attempts of some writers to affiliate them to the surrounding Mongoloid peoples, their claim to membership with the Caucasic family is placed beyond doubt by a study of their physical characters."—*Ethnology*, p. 419.

[4] Giddings, *Elements of Sociology*, p. 237.

are washed by the currents flowing from the Indian Ocean and the Malay peninsula which must have facilitated the migration of primitive man from the South to the North.

The primitive Ainus of Japan had perhaps emerged from the stone age when found by superior races. That they or another people of the same culture-stage inhabited Japan for a considerable period of time is demonstrated by the discovery of flint, arrows, spear-heads, hammers, chisels, scrapers, kitchen refuse, and various other relics, which have frequently been excavated. Buried for centuries, these relics appear as though recently brought from Yezo, where the Ainu are now slowly but surely disappearing.[1] I cannot agree with Dr. Griffis' opinion that the basic stock of the Japanese people is Ainu, since it is clear that an overwhelming number of invaders again came from the South and in time drove the Ainus into the northern end of Japan. Again, it is improbable that the Ainus alone should have degenerated, while the Japanese have been ever thriving and progressing, if both races were descended from a common stock, as Dr. Griffis supposes.

§ 4. And so a third race, superior to the former ones both intellectually and physically, migrated to Japan from two different directions. The one came from the Asiatic Continent by way of Corea; the other, it seems, came from the islands in the southern ocean. It is generally assumed that the former landed at Idzumo, while the latter settled at Kiushu. A glance at the map of Japan reveals the fact that the south-

[1] "One is generally struck in Ainuland by the number of old men and children, and by the almost entire lack of young fellows between the age of fifteen and thirty. This is due mainly to the great increase of mortality in children during the last two generations. The sadness which seems to oppress the Ainu and which we see depicted on the face of each individual is nothing but the outcome of this degeneration of the race. As a race the Ainu will soon be extinct. I dare say that in fifty years from now—probably not so long—not one of the hairy savages, who were once the masters of Saghalin, Yezo, the Kuriles, Kamschatka, and the whole of the northern Japanese Empire, will be left."—Landor, *Alone with the Hairy Ainu*, pp. 296–297.

eastern end of the crescent-shaped chain of our islands approaches the Asiatic continent at the southern end of Corea. Between these approaching points of Corea and Japan there lie two islands. Thus, it could not have been very difficult for adventurous continentals of ancient times to cross over the strait to Japan. Now, the continentals who landed and settled at Idzumo were in all probability Mongolians. The period of their first immigration is lost in the mists of prehistoric times.

Again, a map of the Pacific and Indian oceans reveals another very interesting fact. Japan occupies a striking position as to the ocean currents which flow up from the Indian Ocean and the Malay Peninsula. A branch of the great equatorial current of the Pacific, called the Kuro-Shiwo, or Black Stream, flows up in a westerly direction past the Philippines, Formosa, and the Riu-Kiu Islands, striking the southern point of Kiushu, and sometimes, in summer, sending a branch up into the Sea of Japan. "With great velocity it scours the east coast of Kiushu and the south of Shikoku; thence, with diminished rapidity, it envelopes both the groups of islands South of the Bay of Tokyo and Oshima; and, at a point a little North of the latitude of Tokyo, it leaves the coast of Japan and flows northeast toward the shores of America. With the variable winds, cyclones, and the sudden and continued rise of violent storms, for which the coasts of Eastern Asia are notorious, it is easily seen that the drifting northward from the Malay Archipelago of boats and men, and the peopling of the shores of Kiushiu, Shikoku, and the western shores of Hondo[1] with men from the South and West must have been a regular and continuous process."[2] Besides, there are numberless islands, small and large, which form a connecting link between Japan and India. Floating on the swift current, and guided by the islands, it seems but natural

[1] Hondo is the name of the largest island of Japan, while Shikoku and Kiushiu are the names of smaller ones.

[2] Griffis, *The Mikado's Empire*, p. 27.

that a branch of the Aryan race[1] which peopled India should have drifted up to the southern part of Japan.

When branches of the Aryan stock went forth from their primitive home to the East, when they established themselves on the Punjab and spread over India, they became acquainted with a hard metal, probably iron or silver. They learned how to weave and saw; they began to wear clothes and eat cooked foods; and, what is of still more importance, they learned the art of ship-building. Those who landed at Kiushiu were beyond the stone age, and their swords, and spear and arrow heads were made of some hard metal. They were more intelligent and stronger than those who migrated from Corea. After a severe and incessant struggle, the former finally conquered the latter as well as other aborigines, and established a crude form of government about 660 B. C. The superiority of this race must have appeared marvellous to the conquered people, for they regarded the invaders as kami, which means god. Indeed the conquerors were looked upon as sacred, and were for a long time called by the name of kami. Moreover, this superior people invented, in time, phonetic or sound-carrying signs, in place of the ideograph,[2]

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[1] The rapid reduction of primitive subsistence seems to have compelled the Indo-Aryans to constantly proceed toward the East. Sir W. W. Hunter, in his *Indian Empire*, says: "As their numbers increased, they pushed eastward along the base of the Himalayas, into what they afterwards called the Land of the Sacred Singers..... The growing numbers of the settlers, and the arrival of fresh Aryan tribes from behind still compelled them to advance," pp. 118–127.—*Cf.* Keene Cie, *History of India*, ch. I.

[2] Professor Rein is not thoroughly at home in the history of Japan when he says in his *Japan* that the Japanese only became acquainted with a written language, viz., the Chinese, in the third century of the Christian era. It is unanimously agreed by native scholars that Japan had some sort of phonetic characters before she came in contact with Chinese civilization. Our syllabic characters now in vogue are partly based upon the original phonetic signs, partly derived from Chinese hierogriphics. "The Chinese elements in the national speech [of Japan]," says Keane, "are all of comparatively recent date, and directly introduced since the dawn of the historic period. They lie entirely on the surface and in no way affect the inner structure of the language, which has had time to become differentiated into a very distinct and at present completely isolated form of speech. It is an extremely

which latter is the most characteristic mark of Mongolian civilization.[1]

From these data, fragmentary and crude as they are, I feel warranted in proposing the hypothesis that in the veins of the Japanese there is a considerable amount of Aryan blood. The process of evolution is indeed wonderful. Consider for a moment the origins of European nations. Starting from their birthplace, be it in Asia or Europe,[2] one of the Aryan "offshoots founded the Persian kingdom; another built Athens and Lacaedemon, and became the Hellenic nation; a third went on to Italy, and reared the City on the Seven Hills, which grew into Imperial Rome. A distant colony of the same race excavated the silver-ore of prehistoric Spain; and when we first catch sight of ancient England, we see an Aryan settlement fishing in wattle canoes, and working the tin mines of Cornwall."[3] The hypothesis of an Aryan migration into Japan is not more wonderful. It is consonant both with the genius of the Aryan stock and with the geographical configuration of the earth connecting India and Japan. Both eastward and westward the Aryans moved along open water routes.[4]

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soft and musical tongue, being in this respect fully on a level with the Italian, especially when spoken by ladies of the upper classes." Indeed the Japanese pronounciation is conspicuously different from the nasal sound of Chinese. The study of the Japanese races from a philological point of view is both important and interesting.—*Cf.* Keane's *Asia*, vol. I., pp. 477–8; Rein's *Japan*, p. 386.

[1] W. J. Hoffman, *The Beginnings of Writing*, p. 180.

[2] *Cf.* Schrader, *Prehistoric Antiquities of the Aryan Peoples*, Pt. I., Ch. IV.

[3] Hunter, *The Indian Empire*, p. 116.

[4] Professor Keane fully recognizes the presence of the Caucasian element in the Japanese people. But his Caucasian theory is at variance with the Aryan hypothesis presented here, inasmuch as the former recognizes a Caucasian element in the Ainus. It may be that both Ainus and the newcomer who drove the Ainus into the North were branches of the Aryan stock. Professor Keane's theory is, therefore, not at bottom contrary to my hypothesis.—*Cf.* Keane's *Ethnology*, pp. 313–316; Keane's *Man Past and Present*, p. 286, p. 313.

§ 5. How long a period there was between the appearance of the superior people and their subjugation of the other races cannot be even approximately calculated. Nevertheless, it is almost certain that Jimmu, the conqueror and ancestor of the present dynasty, laid the foundation of the political organization, so to speak, of the Japanese nation about the middle of the seventh century B. C. Meanwhile, the Mongolian race which came down to Japan through Corea developed and expanded so that, though conquered by Jimmu, they still maintained their existence by the side of the conquering tribe. The Ainu tribe, being inferior to the Mongolians, were gradually driven into the North, though not without a struggle.

Thus, it is asserted that the Japanese nation is of no single origin. It is the outcome of the intermingling of entirely different ethnic stocks. The blood of the Mongolians, the Aryans, and the Ainus, together with some tinge of the blood of the Pigmies, is mingled together in the veins of the Japanese people.

It must be born in mind, however, that the basic stock of Japan is without doubt the Mongolian. Although the Aryan race, according to my hypothesis, became in time the master of the whole islands of Japan, their number was not so large as to change to a very considerable extent the physical and mental conditions of the other races living by its side.

I do not wish to be dogmatic on the hypothesis of Aryan immigration. I lay the hypothesis before the reader simply as a suggestion to be worked out by a further and profounder inquiry on the part of both Japanese and foreign scholars.

CHAPTER II

CHARACTERISTICS OF THE JAPANESE NATION

§ 6. Are national characteristics altogether of racial origin? If so, are characteristics of a certain race transmitted from its forefathers? Or are they products of the environment in which the race has grown up? Two answers have been given to these questions. The one regards hereditary racial characteristics as the preponderating factor in the formation of national character. The other attaches greatest importance to the influence of environment. Thus we find among the advocates of the environmental theroy Bondin, de Quatrefages, Pagliani, Sormani, Ranke, Zograf, &c.; while Broca, Lagneau, Topinard, Cortese, Lombroso, Virchow, Erismann, &c., insist upon the priority of racial factors.[1] The question can not be discussed too carefully. It may be safe, therefore, to admit, as later authorities on Anthroplogy like Beddoe, Collignon, and Livi do, that both racial and environmental causes are equally important in the study of national characteristics. In this chapter we shall study some of the characteristics of the Japanese nation from the racial point of view, while in the next chapter environmental influences will be considered.

§ 7. As already indicated the Aryans,[2] although they succeeded in subduing the other tribes which occupied the main part of Japan, did not, and could not, altogether exterminate or drive them away from the main islands. Among the

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[1] *Cf.* W. Z. Ripley, *The Races of Europe*, ch. I.

[2] In the following pages this designation will be applied, for the sake of convenience, to the superior race who immigrated from the southern islands and landed at Kiushiu, though I still retain some doubt as to their true origin.

tribes, which existed by the side of the Aryan race, the Mongolian or Yellow people stood in the foremost rank and undoubtedly outnumbered the conquering tribe. The short distance between the south-eastern end of Japan and Corea facilitated the crossing over of the continental race to the Japanese islands even after the Aryan invaders had taken entire possession of them. Thus the Mongolians were steadily increasing and prospering under the reign of the Aryans, though not always on good terms with the latter. Meanwhile, the Ainus were still maintaining a foot-hold in the northern part of Japan; and it was only after ten centuries or more of laborious exertions on the part of the reigning race that the Ainus were passably quieted. Under such circumstances it was but natural that the contact of these three races with each other should result in intermarriages and in the crossing of race characteristics. It will be well therefore, to review briefly the characteristics of these component races before discussing those of the Japanese nation as a whole.

Notwithstanding what has already been said concerning de Quatrefages' opinion that the Negritos of Japan were not exterminated, it will be safe to admit that in some cases there was an intermingling of the blood of the Pigmies and the Ainus. It is not probable that Aryans and Mongolians married Pigmies, since the latter were undoubtedly driven out of the main islands by the Ainus long before the two former races made their appearance in Japan. If the Pigmies played any role in the characterization of the Japanese nation, it could have been only through the Ainus who in turn gave way before other conquering tribes of Aryans and Mongolians. Consequently the Pigmies have had little to do with the development of the national character of Japan. Yet, for the sake of a possible remote influence, a few of the characteristics of the Pigmies will be given.

It is practically impossible to ascertain the characteristics of the Japanese Pigmies who lived and disappeared in a prehistoric period. Taking it for granted, however, that the small people now existing in some islands in and about the

tropical zone are analagous to those who peopled Japan several thousands of years ago, we may be allowed to deduce the characteristics of the latter from those of the former. I refer to the Mincopies of the Andaman Islands. Among the Mincopies, modesty and chastity are strictly observed by both sexes, polygamy is forbidden, and marriage is a serious matter with them. "Children are often betrothed by their parents at a tender age, and, no matter what happens, this contract must be carried out soon after the young people have attained the required age. The young fiancee is considered as being already a wife, and any weakness on her part would be considered a crime.....These marriages are happy. The women are models of constancy, and their husbands do not yield to them in this respect. The woman is far from being a slave, as has been said, and the two live on a perfectly equal footing; their mutual relations are marked by courtesy and affection; each has particular duties, but is always ready to help the other if necessary."[1] The rights of property are respected by the Mincopies, and hospitality is one of the characteristic virtues of the islanders. "Mr. Man denies to the Mincopies," says de Quatrefages, "that sort of courage which leads one to court danger for the pleasure of meeting it. In their wars they operate, so far as they can, by surprises, and only attack when they feel certain that they are the stronger party. In their first encounters with the Europeans, however, they conducted themselves gallantly, and displayed a great contempt for death." As to the moral quality of the Mincopies, de Quatrefages remarks that their moral ideas are similar to those of civilized nations, that conduct is generally in accord with their principles, and that the crimes of rape, seduction, and unnatural vice appear to be unknown to them.[2]

[1] De Quatrefages, *The Pigmies*, pp. 199, 101. De Quatrefages says that he secured these data from Mr. Man's *On the Aborginal Inhabitants of the Andaman Islands*.

[2] It should of course be conceded that these qualities of the Mincopies might have in part developed since their separation from the original stock of the Pygmies.

§ 8. Next to be considered are the characteristics of the Ainu race. The Ainus are, however, not the basic stock of the Japanese nation. The consciousness of kind[1] was so strong on the part of the Mongolians and Aryans that the Ainus were gradually compelled to retire to the North. Still, it may be safely admitted that their blood was somewhat mixed with that of the superior races. It is difficult to describe the true characteristics of their people. True, some of them still exist in the northern islands of Japan; but they are no longer the Ainus of ancient times, their original characteristics have long since been lost, and they are fast degenerating. They keep themselves away from all reforming influence; they cannot adjust themselves to, and are, therefore, being killed by the new civilization.[2]

Not these degenerated Ainus[3] but the genuine Ainus of olden times played an important role in the annals of the Japanese nation. It would not be fair to judge the Ainus from what we can really see of them at the present time. Unfortunately, we have no wholly reliable knowledge of the characteristics of the ancient Ainus. What their mental conditions were, what moral principles they maintained, are beyoud our knowledge. We only know, from the narrative

[1] Giddings, *Principles of Sociology*, pp. 131–150.

[2] By the latest census the number of Ainus now living in Hokkaido is put at 17,023.

[3] It is in no way a striking fact that nations or races once prosperous and powerful do often miserably degenerate. Mr. G. Rawlinson, in his *Origin of Nations*, says: "A gradual degradation of the Greco-Bactrian people is apparent in the series of their coins, which is extant, and which has been carefully edited by the late Professor H. H. Wilson and by Major Cunningham. We trace a certain degeneration in the Jews of the post-Babylonian period, if we compare them with their compatriots from the accession of David to the captivity of Zedekiah. The modern Copts are very degraded descendants of the ancient Egyptians, and the Romans of Wallachia have fallen away very considerably from the level of the Dacian colonists of Trajan. In America, both North and South, the modern descendants of the Spanish conquerors are poor representatives of the Castilian gentlemen who, under Cortez and Pizarro, made themselves masters of the Mexican and Peruvian kingdoms, and introduced into the new world the time-honored civilization of the old."—*The Origin of Nations*, pp. 4, 5.

history of wars and heroes, that they were wonderfully bold, and yielded to the conquering races after the stubborn resistance of over a thousand years. In the present state of degeneration they are referred to in Landor's *Hairy Ainu* as "soft, good, and gentle, but savage, brave, and disreputable." It is almost undeniable that the original Ainus had great courage and perseverance.

§ 9. Coming to the Mongolians, who are the most important element in the Japanese nation, inasmuch as they were the most numerous of all races of Japan, one encounters the same difficulty in getting at their true character. The Chinese, the typical representatives of the pure Mongolian, have been standing still (or perhaps retrograding) for several centuries, and there has appeared as yet almost no indication of regeneration. They cling firmly to their antique mode of thought, and are irrevocably wedded to their peculiar customs and manners. Worse still, they have little political loyalty or National patriotism. Whatever of danger may come to the Nation is of little concern to them, provided the calamity does not cause any damage to their persons and property. Can it be said, then, that the Chinese and Coreans are *a priori* conservative and unpatriotic? Or have they become such through later circumstances? This is a question that can not be considered too carefully. However stagnant they now are, they had achieved a considerable civilization when the peoples of Europe were still in a condition of chaos. In the face of such a fact, can we not find an explanation of the stationary character of their civilization at the present time? For my part, I believe that their humiliation, stagnancy, and selfishness are for the most part—perhaps wholly—the result of the maladministration[1] of thousands of years, combined

[1] Dr. Francis Lieber, in his *Manual of Political Ethics*, discusses how unfavorably bad government affects the character of the people under its rule. He says: "It is one of the greatest blessings to live under wise laws administered by an upright government and obeyed and carried out by good and staunch citizens; it is most grateful and animating to a generous heart, and a

with some backward political ideas and an unfavorable geographical environment.[1] Dr. Edkins, in his short article entitled *The Antiquity of the Chinese*, commenting on the character of the Chinese, says: "The national spirit, when looked at broadly, is really civilized and progressive, or they would not have such a noble history of useful inventions to be proud of. We are too ready to pity and despise as barbarism that which is in reality a type of progress more steady and long-continued, though less brilliant and energetic, than our own." May I not safely agree with this profound scholar of Chinese religion and literature?[2]

§ 10. Having thus reviewed briefly a few phases of the characteristics of Pigmies, Ainus, and Mongolians, it now behoves us to note the characteristics of the Indo-Europeans who sent to Japan one of their offshoots. According to Professor Ratzel, one of the greatest authorities on Ethnology, the Dards, who now live at the headwaters of the Indus as far as the Oxus watershed and the Gilgit river, show perhaps one of the purest stamps of the stocks whose immigration gave rise to the Indo-Europeans. "They are stalwart and well built,

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mind which cheerfully assists in the promotion of the general good, or salutary institutions. It greatly contributes to our self-esteem if we live in a community which we respect, among fellow-men we gladly acknowledge as fellow-citizens. Many of the noblest actions which now adorn the pages of history have originated from this source of inspiration. On the contrary, we feel ourselves humbled, dispirited, we find our own views contracted and our moral vigor relaxed, we feel deprived of that buoyancy without which no manly and resolute self-possession can exist, it wears off the edge of moral sensitiveness, when we see ourselves surrounded by men with loose political principles, by a society destitute of active public opinion, which neither cheers the honest nor frowns down immoral boldness; when we hear of bribed judges, perjured officers, suborned witnesses, of favor instead of law, and can perceive only listless spectators, without any opinion of their own, any spirit of veracity and trustworthiness or mutual dependence."—*Manual of Political Ethics*, p. 80.

[1] *Cf.* Reinsch, *World Politics*, pt. II., ch. I.

[2] Dr. Joseph Edkins is the author of *Religion in China*, *The Early Spread of Religious Ideas*, *China's Place in Philosophy*, *The Chinese Characters*, *The Chinese Colloquial Language*, *etc.*

good mountaineers, strong porters, lovers of liberty, frank-hearted; with red cheeks, brown eyes, black or brown hair."[1] The same authority reminds us that the Indians of the north-western part of India have conspicuous qualities of character, which have given and perhaps will again give to the Sikh race especially so great importance in the history of India.[2] Through the Vedas and other literatures which were discovered recently, we learn that the Hindo-Aryans once had a high talent which shows a fine mental and ethical disposition.[3]

Although the Aryan immigrants to Japan must have been small in number, they exerted a great influence upon the civilization of Japan, inasmuch as they were the final conquerors of all the islands. A conspicuous difference in the character of the Japanese people from that of the Chinese and the Corean makes us aware that there is something significant in the racial elements of the island nation.[4] Love for independence, passion for patriotism, ardent desire for progress and learning, tenderness towards women, all these and many other characteristics, which are found in the Aryan races of the West, can be found in the Japanese people as a whole. For twenty-five centuries, from the beginning of our national life down to the present day, Japan has been always on the onward path, she has never retrograded in the long run, she has never fallen under the yoke of foreign rulers, she has always been ready to transplant foreign civilization to her soil, and above all her sons have displayed passionate patriotism whenever her national interest has seemed at stake.[5] If her progress has been

[1] Ratzel, *The History of Mankind*, vol. III., p. 359.

[2] Ratzel, *op. cit.*, vol. III., p. 359.

[3] *Cf.* Ratzel, *op. cit.*, vol. III., pp. 365–6.

[4] Dr. H. Marron says: "I now returned into a country that I knew, and for which I had felt a deep longing while in the heart of China. Dirt, smells, deceit, mean revolting servility, coupled with unjustifiable arrogance, are the chief elements of the Chinese world. The characteristic features of the Japanese world are extreme cleanliness, elegance, a sense of propriety and proportion, an unmistakable dignity and self-respect."—Prof. Rein, *Japan*, p. 393.

[5] In 1279 Japan triumphantly destroyed a Chinese armada which con-

relatively slow, owing to the lack of competition which has necessarily resulted from her isolated situation in the Far East, it has been none the less steady. Japan has done during the last thirty years what Western nations have achieved in several centuries, and now she is determined "to meet the West on its own ground; to enter the fields of rivalry, military and commercial, manufacturing and scientific."[1] Such a brilliant history seems to appeal to the world for its interpretation from the racial point of view. True, our customs and manners and modes of living are radically different from those of western Aryan peoples, but this is due to local environment on the one hand, and to the great influence of Mongolian civilization on the other.

§ 11. It has been often said that chivalry is an institution which was found among the European races alone.[2] Such an assumption has no historical foundation, because chivalry is an institution which blossomed in the barren soil of feudalism in Japan, resulting in time in the splendid ethical system of that period, "which makes us aware that we are still under its potent spell."[3] Patriotism, loyalty, honor, and respect for the weaker sex form the backbone of this morality. One is struck by the singular analogy between the knighthood of feudal Japan and that of mediaeval Europe, if he closely examines the moral sentiments of Japan. I admit that chivalry is not wholly good; it has two phases, one of evil and one of virtue. What Mr. Freeman denounces in the European

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sisted of some thirty-five hundred boats with some one hundred thousand Chinese and Tartars, and seven thousand Coreans, which came to invade her; later on they subdued almost all of the Corean Peninsula, not to mention our recent victory over China and Corea.

[1] Colquhoun, *The Mastery of the Pacific*, p. 368.

[2] Dr. George Miller says that chivalry or any other similar institution has never existed either among the nations of antiquity or among the modern Orientals.—Miller, *History Philosophically Illustrated*, vol. II., ch. I.

[3] Dr. I. Nitobe's *Bushido the Soul of Japan* is an elaborate exposition of the chivalrous spirit of feudal Japan.

chivalry, is equally true of the Japanese knighthood.[1] Admitting all his condemnations I still believe that the spirit of chivalry has done a great deal of good for the advancement of Japanese thought. Had there existed no chivalry, I doubt whether the recent regeneration and subsequent progress of Japan had been possible at all. Japan is the only country in the Orient which has decorated the pages of her history with this admirable spirit of chivalry. If the assumption of some Western writers to the effect that chivalry is the production of the Aryan races alone contains some truth, we may be justified in ascribing some racial significance to the presence of this institution in Japan.[2]

§ 12. In the foregoing pages we have noticed the respective characteristics of the three races (or four including Pigmies) which form, in a greater or less degree, the component parts of the Japanese nation. What has been the result of the crossing of the different characteristics of unrelated races? It is absurd to say that all the good qualities of those races have found a place in the character of the Japanese nation; but it can justly be said that some of them, though not unmodified,

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[1] "The chivalrous spirit is," says Freeman, "above all things a class spirit. The good knight is bound to endless fantastic courtesies towards men, and still more towards women of a certain rank; he may treat all below that rank with any degree of scorn and cruelty. The spirit of chivalry implies the arbitrary choice of one or two virtues to be practiced in such an exaggerated degree as to become vices, while the ordinary laws of right and wrong are forgotten. The false code of honour supplants the laws of the commonwealth, the law of God, and the eternal principles of right. Chivalry again in its military aspect not only encourages the love of war for its own sake without regard to the cause for which war is waged, it encourages also an extravagant regard for a fantastic show of personal daring which cannot in anyway advance the objects of the siege or campaign which is going on. Chivalry, in short, is in morals very much what feudalism is in law: each substitutes purely personal obligations — obligations devised in the interests of an exclusive class — for the more homely duties of an honest man and a good citizen."— Freeman, *History of the Norman Conquest of England*.

[2] For the higher position of the Japanese women in olden times, which may show some indication of the presence of the Aryan element in Japan, see chapter VII. of this monagraph.

have been potent factors in the development of the character of the island nation.

In connection with the characteristics of the Japanese people we cannot pass without noticing a fact which is of great importance in the progress of the insular nation. I refer to an advantage which seems to result from the homogeneous aggregation of various composite races. Herbert Spencer, in his *Principles of Sociology*, points out "that a society formed from nearly allied peoples of which the conquering eventually mingles with the conquered, is relatively well fitted for progress," and that "where races of strongly-contrasted natures have mixed more or less, or, remaining but little mixed, occupy adjacent areas subject to the same government, the equilibrium, maintained so long as that government keeps up the coercive form, shows itself to be unstable when the coercion relaxes."[1] Professor Giddings also deems the mixture of races not radically different in intellectual and physical condition one of the most important factors of social progress.[2] That, of the two types of society which Spencer notices, Japan presents a good instance of the former, is a necessary conclusion from the data set forth in this and the previous chapter. The Pigmies crossed with the Ainus, who in turn intermarried with the Mongolians and the Aryans; while the latter two races were intermingled with each other. It is true that a number of Ainus still preserve their ethnic purity in the interior of Hokkaido, (formerly Yezo) our northern island; but they are no longer regarded as members[3] of the Japanese nation, and are gradually dying out. Hence, the progressive tendency of the Japanese nation is partly due to this intermixture of various bloods.[4]

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[1] Spencer, *Principles of Sociology*, vol. I., pt. II., ch. X.

[2] Giddings, *Principles of Sociology*, pp. 324–325.

[3] Professor Giddings, in his *Elements of Sociology*, distinguishes subjects from members of the state, defining the latter as "those who share in the consciousness of the state and who, by their loyalty and their willing aid, contribute to its authority and power."—p. 201.

[4] Herbert Spencer says: "From their [nearly allied peoples'] fusion re-

sults a community which, determined in its leading traits by the character common to the two, and prevented by their differences of character from being determined in its minor traits — is left capable of taking on new arrangements wrought by new influences: medium plasticity allows those changes of structure constituting advance in heterogeneity. One example is furnished us by the Hebrews; who, notwithstanding their boasted purity of blood, resulted from a mixing of many Semitic varieties in the country east of the Nile, and who, both in their wanderings and after the conquest of Palestine, went on amalgamating kindred tribes. Another is supplied by Athenians, whose progress had for antecedent the mingling of numerous immigrants from other Greek states with the Greeks of the locality. The fusion by conquest of the Romans with other Aryan tribes, Sabini, Sabelli and Samnites, preceded the first ascending stage of the Roman civilization. And our own country, peopled by different divisions of the Aryan race, and mainly by varieties of Scandinavians, illustrates this effect produced by the mixture of units sufficiently alike to co-operate in the same social system, but sufficiently unlike to prevent that social system from becoming forthwith definite in structure." — *Principles of Sociology*, vol. I., pt. II., ch. X.

CHAPTER III

EXTERNAL ENVIRONMENT — ITS EFFECT UPON THE CHARACTER OF THE JAPANESE NATION

§ 13. In ancient times some of the Greek philosophers, and in the middle and modern ages Bodin (1530–1596) and Montesquieu (1689–1755), of France, Filangieri (1752–1788), of Italy, and Ritter (1779–1859), of Germany, had already noticed that cosmic phenomena exert a potent influence upon both the human body and mind. In Henry Thomas Buckle's *History of Civilization in England* this theory of the relation between external environment and civilization was still more boldly declared. According to this English thinker the actions of mankind are merely the product of a collision, to use his expression, between internal and external phenomena. Although his theory has been severely criticized, and requires a more cautious statement than it received at his hands, his essential contention that man cannot be absolutely free from the influence of environment remains true. "Unlike the lower animals," says Bluntschli, "man can live and retain his characteristics in all regions of the earth. He has a greater power of resisting atmospheric influences, and completer means for facing dangerous climates. But he is still affected both in mind and body by heat and cold, day and night."[1] Among the primitive men whose psychical condition was still undeveloped, the influence of cosmic phenomena must have been very keenly felt. But as the rational quality of mankind develops through the influence of culture, external environment as a factor in civilization becomes less and less significant.[2] Nevertheless a consideration of the external environment

[1] Bluntschli, *The Theory of the State*, p. 225.

[2] *Cf.* Prof. Seligman, *Economic Interpretation of History*, in the Political Science Quarterly, February, March, and June, 1902.

still remains important in the study of the evolution of civilization in every country, inasmuch as the characteristics of every nation at the present time have been inherited from the past in a greater or lesser degree. Hence scholars of social science devote a considerable portion of their time today to the study of the adjustment of the human body and the mind to their environment.[1] The characteristics of the Japanese cannot be ascertained simply by noting the characteristics of the various races which compose the nation. To discover an otherwise inexplicable cause for the defects and virtues in the characteristic traits of the Japanese nation we have to investigate the processes and effects of its adjustment to environment. It is impossible, however, to consider all the questions which may arise in relation to this subject. A complete and exhaustive discourse on the problem cannot be expected in a short and general treatment which is merely preliminary to the main discussion. This chapter will, therefore, present but a few of the important phases of the geographical and cosmic phenomena which gave rise to and then modified the characteristics of the Japanese.

§ 14. In the first place, let us see what effects climate has produced. Climate in Japan is not so mild as is usually supposed by foreigners. On the contrary, it is severely cold in winter, except in a few places ; in the northern part, in particular, we have heavy snowfalls from November to April. There is scarcely any place where the thermometer does not reach the freezing point in winter.[2] In summer, on the other hand, it becomes very hot; in some places the heat is almost unendurable. Fortunately, however, we have two seasons between the cold and hot, and the hot and the cold, which are very beautiful, pleasant, and healthful. In short, the climate of Japan is one of constant but gradual change; the average is

[1] *Cf.* Ripley, *The Races of Europe*, chs. I., and XIX.

[2] In this discussion I exclude Riukiu and Formosa from my consideration, because these territories, being added to Japan quite recently, have had almost no influence upon the characterization of the Japanese nation.

neither extremely cold nor extremely hot. Nor is it unhealthful. Now, history shows us that civilization does not advance nor continue in a region where the climate is injuriously cold or hot. In either extreme of temperature, man's energy and vigor do not, and in all probability cannot, exert themselves. The silence of the forests during the noon-tide glare in tropical regions, does, indeed, furnish evidence of the enervation of animal life; while the stunted shrubbery in the remote northern regions shows the depressive influence of extreme cold. It is a temperature that is moderate and changes regularly which most stimulates human energy, both mental and physical, and is favorable for the conservation of energy.[1] Thus Japan has some advantages which have tended to develop her civilization.

Another external factor, equally important, is the quality of the air in respect to dryness and moisture. Great humidity, especially when joined with great heat, is a hindrance to progress, because it decreases bodily activity by preventing cutaneous and pulmonary evaporation which is necessary for the movement of fluids through the tissues which furthers molecular changes.[2] Great humidity and heat, furthermore, cause conditions unfavorable to the development, of the human mind by veiling the sky with clouds which shut off the sunshine and give to nature a gloomy aspect. Unfortunately, Japan has a rather wet atmosphere. The rainfall there is above the average for most countries, varying greatly, however, in different years. From the middle of June to the beginning of July, it rains almost every day; when it does not rain, clouds cover the sky. This is called the "rainy season." If there had been no compensating influences, this humidity would have proved an insurmountable obstacle in the path of progress; but we are favored with many compensating influences. First, our climate is not always so hot as to injure the human body; secondly, the rainy season does not last more than a month,

[1] Spencer, *Principles of Sociology*, vol. I., pt. I., ch. III.

[2] Spencer, *op. cit.*, vol. I., pt. I., ch. III.

and frequently it is shorter than that; thirdly, the spring season brings an abundance of flowers and verdure which enlivens and cheers every mind; and fourthly, our island Empire is surrounded by the ocean which affords magnificent and inspiring scenes. These influences with many others offset the evil influences of a wet atmosphere. Moreover, the rainfall is seldom so heavy as to damage the crops. True, it often causes more or less injury to fields in one locality or another, but never does it destroy the crops through a very large district. Now, an obstacle of such a nature may often call into being some positive virtues in the character of mankind. Contact with difficulties which are not altogether insurmountable creates a desire for success and arouses a temper of opposition. As Professor Patten, in his *Development of English Thought*, rightly puts it: "wrath, anger, a stubborn resistance to aggression, and a vigorous reaction against any source of restraint or pain, thus become essential instincts." This explains the reason why "the northern man conquers nature, while the southern yields to it." Rains, snows, cold weather, and moisture, are the obstacles in Japan which can be attacked and modified or removed. Hence, such a condition of nature is not wholly an evil after all. Morally it is pregnant with manifold advantages.[1] Have not courage, boldness, and love of independence partly developed from the struggle with these

[1] "In southwestern Asia, where water is the limiting requisite, most of the land is a dreary waste, a desert dotted by a few oases.....The rainfall is so uncertain that men can do little to relieve their situation. Such an environment develops hope, patience and humility. The littleness of man is constantly contrasted with the greatness of the dispensing powers above him. In a more favored agricultural region, however, nature dispenses heat and rain with such regularity that man's attention may be directed to other matters than the rainfall, particularly such obstacles as can be overcome. Where the limitations to progress, and especially the sources of pain, are not the dominant aspects of nature, but are a combination of smaller forces and obstacles, these can be attacked in detail and removed or modified. Contact with the great forces of nature over which man has no control develops a feeling of helplessness and humility; contact with smaller difficulties creates a temper of opposition."—*The Development of English Thought*, p. 58.

natural obstacles which have not been insurmountable or immutable after all? Has not the character of the Japanese nation been partly built by the subjugation of natural forces?[1] Those who try to trace the origin of the characteristics of any nation to religion or education alone can never reach a true conclusion.

§ 15. Passing from climate to flora, we find Japan abundantly favored by nature. Stretching from North to South in the Pacific Ocean and in the temperate zone, Japan is endowed with a great variety of flowers, shrubs, and trees. Throughout the year there are flowers of some sort or other. Even in the winter of the cold North, where the snow is several feet deep, various kinds of evergreen dot the whiteness. Such a variety of flora and such beauty inspire man with poetic and aesthetic ideas, and make possible "a consequent advance of the arts, and an accompanying development of skill and intelligence."[2]

§ 16. Coming to the fauna, we notice that Japan contains no such fearful animals as elephants and tigers, nor such annoying insects as the "flies" of tropical regions, or the mosquitos of Orinoco. The absence of these animals and insects is an advantage to civilization.[3] At the same time in ancient ages there must have existed many kinds of wild animals, the hunt-

[1] Failures and disappointments "act upon the character of the unsuccessful or disappointed person. If he is morally weak and has but little will-power, he may become discouraged and continue through life to fail in nearly everything that he undertakes. But if he is strong, and resolute, and quickwitted, his experiences have a different effect. Failure only strengthens his resolution to try again.....Mentally and morally he changes, as a result of his imperfect attempts to change and adapt the things about him. While trying to adapt the world to himself, he also begins to adapt himself to the world. He learns to be persistent, to control his temper, to face disappointment bravely, and to be ready at all times to abandon an imperfect plan and adopt another that promises better results." —Giddings, *Elements of Sociology*, p. 40.

[2] Spencer, *op. cit.*, vol. I., pt. I., ch. III.

[3] Spencer, *Ibid.*

ing of which was the chief business as a means of support to our ancestors. It is the characteristic feature of cold, wet regions in the North that the source of food supply is chiefly large game, so vigorous and so fierce that a man dares not hunt it alone. The necessity of hunting large game calls forth the concentrated action of the members of a group, and finally results in a stronger social cohesion. Professor Patten says: "Where success depends on mutual help, there grows up also a feeling of the solidarity of responsibility which is the basis of morality. The causes of failure and success lie within the group; the wrath and enmity of the group are directed against those who cause failure, and its approval is given to those who bring success. Certain standards are acquired obligatory on all, which are enforced by instinctive feelings common to all. The feelings of the solidarity of responsibility thus harmonizes with the tendency to react strongly and effectively against the sources of pain. The combined development of the whole group is the characteristic of the civilization of cold, wet countries, where nature acts with regularity, that the attention of men can be directed to secondary obstacles."[1]

It is certain that the same process which Professor Patten pointed out in regard to northern Europe once occurred in Japan. Thus we see that at the bottom of our national character there lies a "feeling of the solidarity of responsibility" which has been entailed from the common participation of our forefathers in the hunt.

§ 17. In studying the phenomena of the external environment, we should not overlook topographical features. "Localities which are uniform in structure are unfavorable to social progress," because "sameness of surface implies absence of varied inorganic materials, absence of varied experiences, absence of varied habits, and, therefore, puts obstacles to industrial development and the arts of life."[2] Japan is one of

[1] Patten, *op. cit.*, 5. 59.

[2] Spencer, *op. cit.*, vol. I., pt. I., ch. III.

the countries which present the most varied features in different localities. The cold weather and deep snow in the North are contrasted with the milder weather and the ever-green fields in the South; in one region some sorts of plants thrive, in another region other kinds flourish; here towns and villages are surrounded by lofty mountains, there people settle on the broad sea shore. It is needless to say that our islands are but the direct continuation of the mountain system of the Asiatic continent. Thus the country, besides being divided into many islands, is separated by mountain ranges which form its backbone and branch off into subordinate chains that are prolonged irregularly in every direction. What is produced in one island is unknown in another, and what is familiar in this mountain basin is quite strange in that valley. If the hypothesis of Spencer, which I have just mentioned, is true, Japan may claim a great advantage over other nations in her opportunity for civilization.

In connection with the influence of mountains, we have to observe that the dwellers in mountainous regions are obliged to exert their power to the utmost every day. Such a sturdy life gives them a strength and a power of self-help which makes men of them. "Then the broken character of a mountain country, with its many secluded valleys, favors the rise of small communities, which grow up in sturdy independence, and are firm to resist invasion."[1] Hence, stubborn resistance to aggression is a peculiar characteristic of the Japanese nation.

§ 18. There are, however, unfavorable factors in the external environment. In the first place the isolated situation of Japan has produced some unfortunate results. Japan has often been referred to as the Great Britain in the Far East on account of its being separated from the continent. Now, this isolation has its drawbacks as well as its advantages. It has advantages in that social integration is relatively easy within

[1] Bluntschli, *The Theory of the State*, bk. III., ch. II.

a territory, which, bounded by natural barriers, affords facilities for coercing the union of its inhabitants. Man regards the island territory as his only home, and becomes settled in his abode. Among the members of social groups in such a country, consciousness of kind or like-mindedness is easily stimulated, resulting in time in strong social cohesion and in national unity. Such is the advantage of an isolated country. But the disadvantages are as great as its advantages. I refer to the absence of competition. Rare contact with other nations which have different or higher types of civilization, is not favorable for making man aware that there exist other nations which surpass his own country in many respects, nor to inspire him with the desire for greater accomplishments. Its results are vanity and prejudice. Such has been the case especially in Japan, whose continental neighbors are, on the one hand, China and Corea, whose civilization was stultified many centuries ago, and, on the other hand, the barren regions of Siberia. Thus we have had no competition even beyond our straits. True it is that our civilization was at first introduced from China and Corea but they soon ceased to be our civilizers, and we attained to a higher round in the ladder of culture than they have ever reached. Besides, the Japanese always regarded themselves as superior to and more powerful than the Chinese and the Corean, because they have always gained victory over them, whenever military operations were undertaken. Though in an analogous situation, our sister island country in the Atlantic has had to compete with many nations beyond the narrow Strait of Dover. Hence her grand civilization, in spite of her geographical isolation. In fact, the slow progress of Japan during several centuries before her doors were opened to western civilization was mainly due to her isolation. Even at the present time, when communication with occidental countries has been very much facilitated, the natural disadvantage of her location is still insurmountable; and the dullness, if not the lack, of competition with other nations will act as an unfavorable influence upon Japanese minds for some time to come.

§ 19. Another factor, which may have been of some hindrance to the wholesome growth of the Japanese minds in the primitive period, is found in the maritime position of the country. It is universally recognized that an insular, or peninsular, country develops the love of adventure and commerce. But the tremendous tidal waves, not unfrequently accompanied by cyclones, and the restless condition of the sea, which is ceaselessly rolling and roaring, produce a peculiar type of human mind. They make man excitable and fickle, and create superstitious imaginations.

§ 20. A still greater hindrance to Japanese civilization is found in its frequent earthquakes. The average occurrence of earthquakes is more than once a month, frequently causing much damage. Several generations ago, a severe shock nearly destroyed Tokyo, the capital of Japan. Recently an earthquake occurred at the Prefectures of Aichi and Mino, resulting in dreadful destruction. It is a well known fact that Japan stands over volcanic furnaces which must have been violently blazing in the geologic ages, and some of which are still puffing up continual jets of steam and scattering a rain of ashes. We can still count over twenty active, and hundreds of dormant, volcanoes. "The ever-greenery that decks them today reminds one of the ivy that mantles the ruins, or the flowers that overgrow the neglected cannon on the battle field. Even within the memory of men now living have the most awful and deadly exhibitions of volcanic desolation been witnessed. The annals of Japan are replete with the records of these flame-and-lava-vomiting mountains, and the most harrowing tales of human life destroyed and human industry overwhelmed are truthfully portrayed by the pencil of the artist and the pen of historian in the native literature."[1] In addition to the frequency of earthquake shocks, the terrible action of volcanoes is very unfavorable to the development of the rational mind. Such aspects of nature predispose primitive

[1] Griffis, *The Mikado's Empire*, p. 20.

populations to emotional and impulsive action, but never to rational and intellectual action. They stimulate the imagination and feeling, but never give rise to cool, critical, scientific, and profound thinking.[1] At the best, their products are sympathetic feeling, and aesthetic and religious ideas. The reason why there have been so few profound thinkers and so few scientists may, I believe, be explained partly by the presence of these external factors. Poets and artists we have had; but we cannot boast of many scientific discoveries. Philosophic thinkers, who have aroused the world's admiration, have never had a place in the history of Japanese civilization. We find similar results in Italy and Spain where volcanic eruptions joined by warmer temperature appear to have constantly impeded the development of intellectual thought.[2]

§ 21. There is another phenomenon which it seems to me joins earthquakes and volcanoes in stimulating the emotions. I refer to rapid torrents. Japan is one of the most richly watered countries in the world. Everywhere one finds brooks running with pure, clean water; everywhere he encounters beautiful rivers between green banks. Narrow as the country is, steep and high as the mountains are, the rivers and streams, in nine cases out of ten, flow down swift as an arrow. At their sources they not unfrequently display the most appalling sights, running down from lofty mountains, breaking the rocks, rooting up the gigantic trees, and sometimes culminating in magnificent falls touched with heavenly beauty. These things may supply powerful stimuli to poetical ideas, and to the emotions. To rational thinking, however, they make very few contributions.

§ 22. In summarizing, we may safely say that valor, courage, chastity, sympathy, stubborn resistance to aggression, the

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[1] Giddings, *Elements of Sociology*, p. 136; *Principles of Sociology*, bk. II., ch. II.

[2] Buckle, *History of Civilization in England*, ch. II.

feeling of the solidarity of responsibility, and the predominance of poetical ideas—form the better portion of our national character; while national pride and prejudice—which have resulted from isolation—and impulsive feelings[1]—which are incompatible with rational thinking—constitute the more unfortunate elements. At first glance the former appear to overbalance the latter. Nevertheless, the impulsive feeling, when unbridled, might possibly overwhelm all the virtues of the nation. Inasmuch as democratic government must be based upon public opinion or social will,—the soundness of which depends upon the rational like-mindedness of social groups,—the future of the Japanese commonwealth, if I may so call it, will find no small impediment in the hitherto unnoticed characteristics of the Japanese nation.[2]

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[1] M. Bousquet, who had fuller opportunities than most foreigners of appreciating the national character of Japan, writes: "The private life of the Japanese resembles their political life, as perceived from their history, and both resemble the climatic features of the country. Long periods of repose and slumber, alternate political awakenings and impetuous outbreaks. A natural lethargy interrupted by violent shocks. The fanfaronades of the carnival penetrate the mist of melancholy. Everything proves that theirs is a temperament without equilibrium, a disposition tossed like ships without ballast, a passive nature driven backwards and forwards by fits and starts. There is much love of pleasure and surprises, disinclination for preserving labour; sudden flights and sudden flagging in quick succession, much activity, intelligence, and talent; little principle and no character. Like the scourges with which their country is visited [Bousquet means Taifune, earthquakes and conflagrations] their energy has its disorderly awakening."

There is of course some exaggeration in this statement, but it surely gives us a warning against the impulsiveness of the Japanese people.—Rein, *Japan*, pp. 394–5.

[2] For restraining influences upon the impulsive character of the Japanese see chs. VII. and VIII. of this monograph.

CHAPTER IV

A BRIEF SURVEY OF THE POLITICAL HISTORY OF JAPAN BEFORE THE RESTORATION

§ 23. As the recent regeneration of Japan is in certain respects the restoration of the ancient political regime, it is necessary to devote a few pages to a study of our political history before the restoration in order to understand more fully the development of political ideas in modern times. I shall, however, avoid details and limit myself to the few points which are absolutely necessary to pave the way for the main discussion.

The conquering Aryans, after hard fighting with the aboriginal and Mongolian races, having brought the territory to a fair degree of tranquility, laid the foundations of a theocratic monarchy in the central part of the main island. This took place 2,561 years ago according to native historians.[1] It was a crude form of patriarchal government. For several centuries after the establishment of the government, the rulers were toiling arduously for the subjugation of the tribes who disturbed the peace of the main island from time to time. Before the middle of the seventh century there occurred no events of political importance, except that the continental civilization had been continually pouring into Japan through Corea since the beginning of the third century of the Christian era, and that our forefathers incessantly invaded the Peninsula and finally succeeded in levying tribute upon some of its provinces.[2]

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[1] Dr. J. J. Hoffman, who has written the best Japanese grammar yet published, in expressing the exact date given in the Kojiki in terms of the Julian style, says the 19th of February 660 B. C. was the day of the accession of Jimmu the first Emperor of Japan.

[2] *Cf.* Griffis, *Corea the Hermit Nation*, ch. VIII.

It is worth while to note here that from the very beginning of her national life, Japan had a voluntary organization akin to the *collegia* of the Romans, the *eranoi* of the Greeks, or the guild of mediaeval Europe. The people were organized into the *goniu-kumi* (literally the Association of Five) which consisted of five families. Each Association was co-related with other similar associations within certain boundaries.[1] The primary aim of this institution was the banding together for mutual help, mutual enjoyment, and mutual encouragement in good endeavor. The organization was well-nigh perfected in the seventh century A. D. and had continued to grow until the feudal regime was abolished as the result of the recent regeneration. The importance of the *goniu-kumi* in the political history of Japan lies in the fact that it was in the nature of a preparation for the recent adoption and subsequent growth of local self-government. The Japanese had not been altogether untrained for the spirit and principles of local self-government even before the advent of western political ideas in the Island Empire. It is manifestly absurd to ascribe to any one country or race the special initiative of such an institution as the guild. It is by no means the product of European races alone.[2]

§ 24. The beginning of the seventh century was made memorable by the introduction of orders of nobility with bureaucracy as a system of government. Before that date the Emperor was the real ruler. He managed civil and military affairs personally. There were no nobles, no commons. The people had free access to the sovereign, there was no hedge or net of officialdom to hinder the presenting of remonstrances or petitions. It seems probable, therefore, that the Japanese nation enjoyed much more freedom for the first thousand years succeeding the establishment of the government than in

[1] Prof. Hodzumi, of the Tokyo Imperial University, is the greatest authority on the *goniu-kumi*. He wrote a book entitled *Institution of the Goniu-Kumi*, which is not accessible in English.

[2] *Cf. Encyclopedia Britannica*, Art. *Guild*.

later periods. This state of things did not, and could not, last after territorial expansion had made a more complicated governing organization necessary. Gradually there appeared the class of nobles, which in time evolved the two castes of civil and military officials. Naturally there came to be a great gulf between the King and the people. The King no longer appeared before his subjects. No longer did he lead his armies in time of war, and carry on the administration of affairs in time of peace. He became secluded from the outer world, and was enthroned behind the screen which hid the monarch from the gaze of his subjects.

The more complex form of government established about the middle of the seventh century comprised the following eight departments: The Nakatsukasa-Sho[1] (Department of the Imperial Palace), the Shikibu-Sho[2] (Department of Civil

[1] The Nakatsukasa-Sho had charge of the following matters:—(1) those relating to attendance upon the Emperor, to the giving of advice to him on his personal matters, and to the assisting of him in the maintenance of a proper dignity and in the observance of proper forms of etiquette; (2) those relating to the inspection and countersigning of drafts of Imperial Rescripts, and to the making of representations to the Emperor; (3) those relating to the issuing of imperial orders in time of war; (4) those relating to the reception of addresses to the Emperor; (5) those relating to the compilation of the history of the country; (6) those relating to the gazetteer and the personal status of imperial princesses of from the second to the fourth generation, and of the maids of honour and other court ladies; (7) those relating to the submission to the Emperor for his inspection of the census of the population in the various provinces, of the accounts of the taxes to be levied, and the lists of the priests and nuns in the same; (8) those relating to the Grand Empress Dowager, the Empress Dowager, and the Empress; (9) those relating to imperial archives; (10) those relating to the annual expenditure of the court and to various articles to be provided for the use of the Imperial family; (11) those relating to the astronomical calculations and the arrangement of the calendar; (12) those relating to pictorial artists; (13) those relating to medicaments to be supplied to the Emperor and the medical advice to be given him; (14) those relating to the maintenance of order in the palace.—Ito, *Commentaries on the Japanese Constitution*, p. 86.

[2] The Shikibu-Sho had charge of the following matters:—(1) those relating to the keeping of the lists of civil officers; (2) those relating to appointment to office and to rank, and to the rewarding of meritorious services; (3) those relating to the superintendence of schools and civil examinations; (4) those relating to the appointment of stewards in the houses of Imperial

Affairs and Education), the Jibu-Sho[1] (Department of Etiquette and Ceremonies), the Mimbu-Sho[2] (Department of Revenue and Census), the Hyobu-Sho[3] (Department of War),

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princes and in those of officials of and above the third grade of rank; (5) those relating to pensions of all kinds and to donations; and (6) those relating to the order of precedence of the various officials at the time of congratulatory occasions and of festivals.—*Ibid.*

[1] The Jibu-Sho had charge of the following matters:—(1) those relating to the names of officials and to the succession and marriage of officials of and above the fifth grade of rank; (2) those relating to auspicious omens; (3) those relating to demises, funerals and the granting of posthumous rank to a deceased person or of donations of money to his family; (4) those relating to the anniversaries of the demise of the late Emperor, and to the recording of the names of all the former Emperors, so that none of those names shall be used by any of the succeeding Emperors or by any subject; (5) those relating to the paying of homage to the Emperor by foreign countries; (6) those relating to the adjudication of disputes about the order of precedence of the various families; (7) those relating to the music; (8) those relating to the registration of names of Buddhistic temples, priests and nuns; (9) those relating to the reception and entertainment of foreigners and to their presentation to the Emperor; and (10) those relating to the imperial sepulchers, and to the list of people in attendance upon them.—*Ibid*

[2] The Mimbu-Sho had charge of the following matters:—(1) those relating to the supervision of the census of the population of the various Provinces; (2) those relating to the contribution of forced labour as tax; (3) those relating to the exemption from forced labour and the rewarding of subjects distinguished for filial piety, or for their integrity in dealing with other people, or of subjects in distress, or of officials of certain classes; (4) those relating to bridges, roads, harbours, lakes, farms, mountains, rivers, &c.; (5) those relating to the estimation and collection of taxes in products, and of those in textures, to the disbursement of the national funds, and to the making of the estimates of national expenditures; and (6) those relating to granaries and to the land tax (tax in grain).—*Op. cit.*, p. 87.

[3] The Hyobu-Sho had charge of the following matters:—(1) those relating to the rosters of military officers, their examination, their appointment, their rank, &c.; (2) those relating to the dispatching of troops; (3) those relating to weapons, guards, fortifications and signal fires; (4) those relating to pastures, military horses, and public and private horses and cattle; (5) those relating to the postal stations; (6) those relating to the manufacture of weapons, and the lists of mechanics engaged in the same; (7) those relating to practice in drumming and in flute playing and to public and private means of water transportation; and (8) those relating to the training of hawks and dogs.—*Ibid.*

the Gyobu-Sho[1] (Department of Justice), the Okura-Sho[2] (Department of Treasury), and the Kunai-Sho [3] (Department of Imperial Household). Over these eight departments the Council of State presided. It was composed of four members, viz., Chancellor of the Empire, or literally Great Minister of the Great Government, Minister of the Left, Minister of the Right, and the First Adviser of State.

Thus it will be seen that as early as the beginning of the seventh century there sprung into being in the obscure island of the Far East a fundamental form of bureaucracy. At the same time the Emperor issued an order to the effect that the country should be divided into sixty prefectures, which should be in turn subdivided into six hundred counties. Henceforth each prefecture and each county was ruled by a governor and a chief respectively, who were dispatched from the central government. Before that time, the country had been honeycombed, as it were, by the chiefs of patriarchal communities, who occupied large tracts of land, and who paid tribute, often irregularly, to the monarch. This rudimentary form of feudalism was entirely abolished by the Imperial order which I have just mentioned, and there appeared, in its stead, a

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[1] The Gyobu-Sho had charge of the following matters:—(1) those relating to the conduct of trials and to the determination of the severity of punishments; (2) those relating to the imposition of fines, to imprisonments, and to penal servitude.—*Ibid.*

[2] The Okura-Sho had charge of the following matters:—(1) those relating to public accounts; (2) those relating to taxes in textures and of offerings to the Emperor; (3) those relating to weights and measures; (4) those relating to prices of commodities; (5) those relating to the coinage of gold, silver, copper, and iron money, and to the lists of the artisans engaged in the coinage; and (6) those relating to the manufacture of lacquer ware, to weaving, and to other kinds of industries.—*Ibid.*

[3] The Kunai-Sho had charge of the following matters:—(1) those relating to rice fields for the supply to the imperial family; (2) those relating to the harvesting done on the Imperial domains; (3) those relating to the presenting to the Emperor, by subjects, of rare delicacies; (4) those relating to the culinary and engineering departments of the court, to breweries, to court ladies, to court smiths, to court servants, and to the Imperial wardrobe and the like; and (5) those relating to the list of the imperial princes and princesses of from the second to the fourth generation inclusive.—*Ibid.*

centralized government. Taxes from every subject took the place of irregular tributes from local chiefs. People were declared the direct subjects of the monarch, and all lands were restored to the central government. Thus a centralized form of government was adopted with the bureaucracy. When this new institution was put in force, the Emperor assembled the members of the government and the local governors, and solemnly proclaimed that, like the sky which covers everything, and like the earth which nourishes all beings, the piety of the sovereign shall be boundless; that any sovereign who disregards this fundamental principle of monarchy shall be punished by divine power and reprobated by his subjects; and that the most essential principle of ruling others is to rule himself. This proclamation might have been based upon race knowledge, and contained no democratic idea in it; but it deserves our attention inasmuch as it has been the guiding spirit of successive Emperors.

The idea of bureaucracy and centralized government was by no means the invention of the Japanese nation. It was, with other things, imported from China, intercourse with which had been continued for a long time. This statement may not seem in harmony with the genius of the conquering race. But this peculiar phenomenon can be easily accounted for. The conquering race had been constantly engaged in subduing other tribes. The government it founded had been essentially military. Before the islands were tolerably pacified and the conquerors attempted to reorganize their government, the influence of Chinese civilization, which is of a much older date than that of Japanese civilization, had been strongly felt.[1]

[1] The wonderful antiquity of Chinese civilization should always be kept in mind in studying the development of Japanese civilization. Otherwise my Aryan hypothesis may become difficult to defend. Mr. Mayers in his *Chinese Readers' Manual* terms the period from B. C. 2852 to 1154 the legendary period, and that from B. C. 1154 to 781 the semi-historical period. Dr. Gustave Schlegel goes further back and adopts the extraordinary view that the stars were named by the Chinese 17,000 years before the Christian era. When Japan had nothing of a government and the conquering race was still struggling against other races for supremacy, China had already

This fact partly explains why our forefathers had to imitate the Chinese form of civil government. But the honor may be claimed for the Japanese nation of having established and maintained the centralized organization for half a millennium; while in China, where it originated, it has never attained a stable condition.

§ 25. Under the centralized and bureaucratic government, the Japanese people enjoyed peace for five centuries, though not without a few disturbances; literature and art made considerable advancement; and the progress in the industry of agriculture augmented the national wealth to a remarkable extent. The power of the nobles was, in the meantime, steadily increasing. The most powerful of them even grasped the sovereignty under the name of prime minister, and the monarch proved to be nothing but a puppet. A few families soon established the hereditary claim to the premiership and created one of the most accursed systems of nepotism ever seen in any country. They filled all the important positions in the government with their relatives, and formed a ring around the Emperor, to exclude all other families from official circles. This was a great, perhaps the greatest, blow to the development of freedom among the people, as these noble families mediated between the king and the masses and prevented the presentation of petitions, which had formerly been a privilege of the people. This anomalous state of things continued for several centuries, during which the power of the military class was slowly but steadily increasing.

By the side of the military and civil nobility, there came into being another class which became so powerful as to hinder the execution of the authority of the central government. I refer to the Buddhist priests. As in Mediaeval Europe the church played a great role in political affairs, so the Buddhist monasteries exercised no small influence upon

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attained a certain stage of civilization. The origin of the Japanese nation is indeed a recent one as compared with that of the Chinese.—*Cf.* Dr. Edkins, *The Antiquity of Chinese.*

the political life of Japan. Unfortunately for Japan, however, the Buddhist monks interfered in politics not for the benefit of the common people, but simply for the worldly ambition of obtaining power. In fact their ambition was so unbridled that they aspired to administrative authority. Naturally, there soon occurred a serious conflict between civil, military, and Buddhist classes. The triangular struggle finally resulted in the triumph of the military class, which removed the civil family from the government, and itself grasped the reins of government. This was at the end of the twelfth century, and the dawn of feudalism in its true sense. The preponderance of the military class rapidly destroyed the centralized government which was established in the middle of the seventh century, and gave birth to the local chiefs who were almost independent of the central government. Thus the end of the twelfth century marks a turning point in the annals of the Japanese nation.

§ 26. Then ensued an interval of four and a half centuries most fruitful of battles and wars, but most barren of political development. It was the period of mingled glory and degradation, of the dark and the bright. It was degrading and dark in that continual wars, with short intervals of peace, mercilessly devastated fields and destroyed property, and shed human blood without a check. It was glorious and bright (1) in that the germ of chivalry, which in time grew into a splendid moral system in our nation, sprung into being; (2) in that our patriotic soldiers united in repulsing, and summarily destroyed, the Chinese Invincible Armada, which came to invade our land with a formidable number of troops,[1] and (3) in that the most enterprising hero Japan has ever seen conducted the war with Corea and overran almost the whole of the Peninsula.[2]

After all, however, it was the Dark Ages of Japan, no less

[1] Griffis, *The Mikado's Empire*, ch. XVII.

[2] Griffis, *Corea the Hermit Nation*, ch. XII.

dark than that of mediaeval Europe. The monarch was still a puppet, managed by the military magistrate, who established an administrative government entirely independent of the king, keeping the real supremacy in his own hands. The empty name and honor of sovereignty were still reserved for the Emperor, but the actual power was entirely taken away from him. This dual system of government made its appearance at the beginning of the twelfth century and became steadily consolidated, culminating in the establishment at the beginning of the seventeenth century, of the Shogunate, which lasted until only thirty-four years ago. During the most of this period the monarch was so neglected that his scanty revenue was scarcely enough for his daily needs. His palace was left without repairs; he lived the humblest life; his uniform was anything but graceful; while the military magistrate indulged in luxury and pomp. True, there had appeared now and then heroic Kings who struggled to restore the real authority to the throne, but their attempts were always fruitless in the face of the overwhelming power of the military leaders.

It is noteworthy, however, that, great and threatening as was the power of the magistrate, he never dared to attempt to remove the Emperor. On the contrary, he always pretended to respect and be loyal to the Emperor. The spirit of loyalty and homage to the Emperor was so deeply rooted in the minds of the people at large that the most powerful and unscrupulous of the magistrates would have risked his own existence the moment he tried to overthrow the throne. Thus the Emperor always continued to be respected by the military magistrates though only in form and words. Despite the long interval of military supremacy, the love for the Emperor never died out of the hearts of the people. It was in part the consummate manifestation of this loyal spirit that overthrew the Tokugawa Shogunate, the military administration, and restored the real sovereign power to the hands of the reigning Emperor in A. D. 1867.

§ 27. The Dark Ages of Japan may be said to have ended

with the dawn of the seventeenth century, when a hero, with a wonderful military ability and a statesmanlike foresight, curtained the bloody stage of war and slaughter, and put a stop to the struggles of rival military factions for the possession of power. When the curtain was raised, there appeared a scene of profound peace which lasted for over two centuries. The hero, Iyeyasu Tokugawa, was a legislator as well as a warrior. He could win a victory and reap the fruits of it. He was, however, a military man, and had no more desire to return the usurped power to the Emperor than his predecessors had had. He founded Yedo, now Tokyo, as the location of his government as distinguished from the Emperor's at Kyoto, and thus completed and consolidated duarchism as well as feudalism. Before that period feudalism had been in a condition of constant turmoil, the central power had been in a state of unstable equilibrium, and the nation was but a conglomeration of units, in which the forces of repulsion ever threatened to overcome the forces of cohesion. Feudalism, with its strong central authority, its complex mechanism, and its equilibrium of power between its component units, may be said to have been established by Iyeyasu Tokugawa, whose heirs held in succession during the period of military domination, that is, from 1603 to 1866.

Iyeyasu bequeathed a *Legacy*[1] of instruction to his successor which was an embodiment of his political thought, or state-craft. The chief object of the posthumous manuscript is to define the relation of the military magistrate to the Emperor and the feudal lords. In regard to the relation to the first, it provides that the migistrates shall respect the supremacy of the Emperor. Here again the danger of disregarding the Emperor was predicted by the foreseeing magistrate and he provided that the nominal power was to be reserved for

[1] The *Legacy* was translated into English by Mr. J. F. Lowder, and published in Yokohama, Japan, in 1874. The translation forms a pamphlet of thirty-seven pages, entitled, *The Legacy of Iyeyasu; a Posthumous Manuscript, in one hundred chapters, translated from three collated copies of the original.*

the sovereign. As to the relation between the magistrate and the feudal nobility, i. e., the relation between the central and local governments, so to speak, the *Legacy* has a provision that governors or lords of smaller territories shall be frequently changed, so that they may not acquire local influence, which is unfavorable to the maintenance of the central authority. But by far the most important provision is yet to be mentioned. I refer to the articles which Iyeyasu conceived as fundamental principles to be observed by rulers. The articles provide that magistrates shall behave towards their subjects with courtesy and consideration, and that all insult and tyranny shall be strictly avoided.

It was by the potent influence of this *Legacy*[1] that the military magistracy enjoyed an undisturbed peace of more than two centuries, during which art, literature, and industry made remarkable progress. But the *Legacy*, which was not published, but kept secret among the author's successors, was of no value in the development of political ideas in Japan. It would have been too much to have expected more advanced political ideas from a mind of the feudal age. As in all other feudal countries, piety, mercifulness, frugality, and honor, were regarded as the essential requisites for rulership in feudal Japan. The defect is that there is no means to guarantee the observance of those virtues on the part of the rulers. To establish a form of government which provides against the abuse of power on the part of the sovereign, remained for the sons of modern Japan.

§ 28. While the military magistracy was at the zenith of glory and power, there was springing up in the minds of

[1] W. E. Grigsby, Professor of Law in the Imperial University in Tokyo, in a paper read before the Asiatic Society of Japan, has given a scholarly analysis of the document, showing especially its similarity to most ancient law codes, such as those of Solon and Lycurgus, the Twelve Tables, the Mosaic, and the early Teutonic codes. He terms it "the most original monument which Japan has produced in the way of legislation."—Griffis, *The Mikado's Empire*, p. 647.

patriotic people a feeling of pity and regret for the humiliated condition of the Emperor, who was bedecked with empty titles. Long before the so-called "foreign devils" came to knock at our doors, there was everywhere in the air of the whole country a discontent and ill-feeling against the usurpation of Tokugawa. Every intelligent mind had become sceptical as to the efficacy of this peculiar form of dual government.[1] Every loyal mind had become indignant at the insolent and overbearing manner of the military magistrates toward the Emperors. Many scholars had written essays on behalf of the restoration of the Imperial rule, in which the golden age of ancient Imperial dynasties had been eagerly and longingly recalled. That feudalism must be overturned sooner or later had already been predicted by a few who had come in contact with western civilization through Dutch scholars and traders. Yet, until the middle of the eighteenth century, the political sea of Japan appeared calm on the surface. With the impact of foreign cannon-balls, all the forces of revolution combined to act for a common cause which concerned the rise and fall of our land. The "Restoration," with all its healthy concomitants, was the result.

§ 29. Thus we have seen that the Japanese nation had achieved very little progress in the way of political organization during nearly twelve centuries subsequent to the first adoption of a centralized and bureaucratic government and prior to the Restoration. The political ideas of the Old Japan had been essentially Chinese supported by Shintoistic views[2] in regard to the status of the Emperor. Freedom and independence of the people as understood in the democratic coun-

[1] Two rulers in two capitals gave to foreigners the impression that there were two Emperors in Japan — an idea that has been incorporated into most of the text-books and cyclopedias of Christendom. Let it be clearly understood, however, that there never was but one Emperor in Japan who is and always was the only sovereign, though his measure of power has been very different at various times.— Griffis, *The Mikado's Empire*, p. 102.

[2] *Cf. infra*, ch. VII.

tries of the West were unknown in Japan prior to the Restoration. It behoves us to remember, however, that the successive Emperors of Japan were, generally speaking, generous and filial towards their subjects. As we have already noted, an Emperor of an early period proclaimed that, like the sky which covers everything and like the earth which nourishes all beings, the piety of the sovereign shall be boundless, and that any sovereign who disregards this fundamental principle of monarchy shall be punished by divine power and reprobated by his subjects. Such has, in the main, been the spirit which guided the policy of the successive sovereigns. This fact should always be kept in mind, for it has so important a bearing upon the development of our political ideas and political institutions that we will have to recur to it from time to time in succeeding pages.[1]

[1] For the recent development of Japan the reader is referred to an article on *The Constitutional Development of Japan* by T. Iyenaga, in the publications of the Johns Hopkins University *Studies in Historical and Political Science*, for 1891, vol. IX., no. 9; see also Sear's *Governments of the World Today*, pp. 236–245.

CHAPTER V

THE CAUSES AND SIGNIFICANCE OF THE RESTORATION

§ 30. A careful perusal of the foregoing chapter may disclose to the reader the significant bearings of ancient history upon the recent development of political ideas in Japan. The bureaucratic and centralized government of present-day Japan was not inaugurated in a day. Neither was it imported from the West, as is usually presumed by foreigners. These political ideas originated in China, and were adopted in Japan over twelve hundred years ago. Whereas in China this political system has never been completed on account of the unstable condition of the central power, our ancestors enjoyed its fruits for nearly five centuries. Then ensued the several hundred years of Dark Ages when the centralized organization was broken asunder. After this there followed almost three centuries of complete feudalism, at the center of which was a military magistrate who wielded the actual supremacy. Finally, we saw the centralized and bureaucratic form of government brought back to us. This, in turn, was soon followed by the advanced idea of representative legislation. At this point let us inquire what the motives were which prompted the Restoration,—the restoration of real sovereignty to the Emperor, the restoration of an energetic central government?

"It is the popular impression in the United States and in Europe that the immediate cause of the fall of the Shogun's government, the restoration of the Mikado to supreme power, and the abolition of the dual and feudal system was the presence of foreigners on the soil of Japan. No one who has lived in Japan, and made himself familiar with the currents of thought among the natives, or who has studied the history of the country, can share this opinion. The foreigners and their ideas were the occasion, not the cause of the destruction of

the dual system of government, which would certainly have resulted from the operation of causes already at work before the foreigners arrived. Their presence served merely to hasten what was already inevitable."[1]

Truly, the recent reformation was the result of no single cause. Neither may it be regarded as the fruit of the exertion of any single person. Revolution, like a huge wave which dashes against the shore, comes from afar, gathering every force and breaking every obstacle in its way, and finally culminates in a marvellous explosion at its destination. So it was with the Restoration of Japan. It was fostered for several generations in the minds of the people, the knights, the patriots, and the scholars. It had combined many forces before it reached its destination. Among these forces we may count four which played the most important role: (1) the decline of central authority; (2) writings of scholars; (3) influence of burgesses or commons; and (4) external pressure brought in by the presence of foreigners. This classification may not be complete, and I present it merely for the sake of convenience.

It is a well-known fact that in the reformation of European nations Christianity played an important role. With Buddhist monasteries in Japan, the case was quite different. They were friends of the nobles, not of the commons. They flattered the wealthy class, but despised the poor people. At the most they sometimes aspired to political power for the sole purpose of self-aggrandizement. There is, however, another religion, called Shinto, which traces its origin back to the beginning of our Imperial dynasty, and has always stood for the Emperor. It may be said that this religion exercised some influence in behalf of the Restoration. I have refused, however, to count it among the motors of the reformation, because its influence was entirely passive, and therefore very weak. Leaving the details of this question for further discussion in a following chapter,[2] it will be sufficient for the

[1] Griffis, *The Mikado's Empire*, p. 291.

[2] *Cf. infra*, ch. VII.

present to state that Buddhism and Shintoism have been aristocratic as well as plutocratic, and naturally have played the smallest part in, if they have not actually been opposed to, every movement for the benefit of the people at large.

§ 31. Now, let us discuss the first cause of the reformation, i. e., the decline of the central authority, or military magistracy. As has already been stated in the previous chapter, the Shogun's government, the magistracy, was at the height of its glory and prosperity from the beginning of the seventeenth century to the middle of the eighteenth. With the dawn of the last century, it began to decline. Most of the magistrates lived in a most extravagant and luxurious way, which exhausted their revenues, and necessitated an ever-increasing tribute to be levied upon subordinate barons. The more frequent and heavier this exaction of tributes became, the weaker the central power became, because the lords never paid the tribute without a feeling of resentment. So long as the magistracy was strong enough to enforce the taxes, there were no complaints among those who were heavily taxed. But as soon as the sign of its decline was vaguely recognized, there began to be heard everywhere a whisper of discontent and uneasiness. The magistrates were no longer vigorous and intelligent men like their ancestor, Iyeyasu, who drafted the *Legacy* which became the testament for his successors. The maintenance of administrative organization based upon a military system depends upon the strength of the central authority to a much greater extent than does the modern system of administration. For several generations after the middle of the eighteenth century, the Tokugawa magistracy struggled against the dissolution which was working within it. But, though it struggled long, the day at length arrived when all the skill and power of despotism, when all the pliancy of servitude, was insufficient to prolong it. At the beginning of the last century all the ties which had held its magnificent edifice together were loosened. Then another force began to undermine it—the writings of Japanese scholars.

§ 32. After the beginning of the eighteenth century, there appeared a number of scholars, who advocated impliedly or explicitly the restoration of real supremacy to the Emperor. Many books and pamphlets were written and published by them, and some of these publications were widely circulated among the people. Like the senators of the cities and the priests of the middle age, who reflected the glory and grandeur of the Roman Empire, these scholars of Japan looked back to the ancient Imperial dynasty for peace, communal welfare, social unity, and all other virtues and glories. They insisted that the state of affairs under the military regents was unnatural and unreasonable, and desired the reappearance of the Emperor *de facto*. It was mainly through the writings of these men of letters that the enthusiastic love for the Emperor was kindled in the hearts of the people, and that the current of thought of the period began to turn against the military magistracy. Therefore, the recent reformation of Japan may in one respect be regarded as the result or the product of the spirit of loyalty.[1]

§ 33. Now, let us pass over to the third cause of the reformation, i. e., the rise of the burgesses.[2] During several generations of prosperity under the magistracy, the progress of commerce and industry gradually developed a class of people who were wealthy and not unfrequently intelligent. When

[1] "The classics which has had so powerful an influence in forming the public opinion which now upholds the Mikado's throne, is the product of the native scholars.....The second Prince of Mito, who was born 1622, and died 1700, is to be considered, as was first pointed out by Mr. Earnest Satow, as 'the real author of the movement which culminated in the revolution of 1868.' Assembling around him a host of scholars from all parts of Japan, he began the composition of the *Dai Nihonshi*, or *History of Japan*. It is written in the purest Chinese, which is to Japan what Latin is to learning in Europe, and fills two hundred and forty-three volumes, or matter about equal to Mr. Bancroft's *History of the United States*."—Griffis, *Mikado's Empire*, p. 298.

[2] By the term "burgess" I do not mean a class of people similar to that which established free cities with charters from feudal nobles in Mediæval Europe. I simply mean the commercial and industrial class of feudal Japan.

all feudal lords, from the magistrates down to the lowest vassals, were extremely empoverished, the burgesses were the only class who had great pecuniary resources. If they were unconscious of the influence they exercised upon the military class, they were none the less one of the potent factors which wrought the destruction of feudalism.

It is true that, like the European burgesses of the middle ages, they could not be possessed of any great feeling of personal independence. The burgess, "comparing himself with the little baron who dwelt near him, and who had just been vanquished by him, would still be sensible of his own extreme inferiority; he was ignorant of that proud sentiment of independence which animated the proprietor of a fief; the share of freedom which he possessed was not derived from himself alone, but from his association with others — from the difficult and precarious succor which they afforded. Hence that retiring disposition, that timidity of mind, that trembling shyness, that humility of speech (though perhaps coupled with firmness of purpose), which is so deeply stamped on the character of the burgesses."[1] What Guizot observed about the burgesses of the middle ages may be applied to the Japanese commons under the magistracy with only a little modification. They secluded themselves in the narrow circles of trade and industry. To them politics was irksome. Moreover, the caste system of the feudal period denied to the masses a development of political thought, the lofty ambition for freedom, and the desire to be employed in public affairs, which are really the offspring of modern democracy. Taking all this into consideration, it may still be insisted that the burgess was an important element in bringing forth the New Japan. As Herbert Spencer points out in his *Principles of Sociology* the growth of the industrial type of society is incompatible with the militant.[2] Where industry grows to a great degree, the militant type of society necessarily disappears, and *vice*

[1] Guizot, *History of Civilization in Europe*, lect. VII.

[2] Spencer, *Principles of Sociology*, vol. I., pt. II., ch. X.

versa. Apart from such a comprehensive interpretation of the problem, there were not wanting reasons which might have caused the discontent and complaint of the commons against the feudal system. The arbitrary administration of the magistrate and of the minor clans became almost unendurable, and they naturally turned to the Imperial rule for redress.

§ 34. When all of the elements which I have just mentioned were at work to undermine the grand edifice of the perfect feudalism which had lasted for two hundred and fifty years, the whistle of the foreign steamers startled the Japanese nation like a thunderbolt out of the blue sky. On the 8th day of July, 1853, four men-of-war arrived at Uraga from the United States. "The signal rockets from the forts were anwered by the rattle of cables and the splash of anchors, and Japan's new era began."[1]

The pressure from outside made the nation aware more fully than ever that a strong central government should be promptly organized to cope with the co-called "foreign invaders." "Deprive the Tokugawa Shogunate of the power, and restore it to the Emperor," was the cry which sounded throughout the length and breadth of the country. By the impact of the cannon-balls from foreign steamers, the downfall of the military magistracy was made easier than it would have been otherwise. The idea of national unity, which was baffled by the internal dissension of the Dark Ages and feudalism for over a millennium was revived and consolidated by the appearance of foreigners. As the wars of Napoleon did a great deal more for Germany than to suppress petty principalities and give rise to a clumsy confederation, as they awakened a sentiment of German nationality, so the sentiment of Japanese nationality was mainly a product of foreign cannon-balls.

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[1] Griffis, *The Mikado's Empire*, p. 617.

§ 35. Thus far, I have tried to make clear what the causes of the reformation were. Let us turn to its tremendous significance. From what has already been said, it is clear that the Restoration signifies the revival of the centralized government, the restoration of the actual sovereignty to the Emperor, the preponderance of the idea of national unity, the recovery of loyal sentiment, and the downfall of feudalism and duarchy. Important and epoch-making as are these changes in the growth of the Japanese nation, they sink into comparative insignificance when we consider other phases of the Restoration. I refer to the appearance of democratic ideas, the appearance of a rudimentary form of representative legislature, and the recognition of the tripartite principle of government. When the Restoration was almost completed, the Emperor appeared before the Council of State and before the nobles and took a solemn oath, promising:

1. That assemblies and councils shall be formed to deliberate on national affairs according to public opinion.

2. That the government and the people shall be in harmony in order to promote the national welfare.

3. That all classes of people shall be allowed freely to exercise their abilities.

4. That the prejudices of former times shall be broken through in order to adopt the impartiality and justice of Providence as the basis of governmental action.

5. That learning and knowledge shall be sought for throughout the world, in order to add to the glory of the Empire.

This promise has been known ever since as the "Five Oaths of the Emperor," and may be regarded as the basis of our constitutional government which was established in 1890. Previous to the Imperial Oaths, one of the indefatigable toilers for the sake of the Restoration sent in a memorial to the Emperor in which he said: "Since the Middle Ages, our Emperor has lived behind a screen, and has never trodden the earth. Nothing of what went on outside his screen ever penetrated to his sacred ear; the imperial residence was profoundly

secluded and, naturally, unlike the outer world. Not more than a few court nobles were allowed to approach the throne, a practice most opposed to the principles of nature. Although it is the first duty of man to respect his superior, if he reveres that superior too highly he neglects his duty, while a breach is created between the sovereign and his subjects, who are unable to convey their wants to him. This vicious practice has been common in all ages. But now let pompous etiquette be done away with, and simplicity become our first object ....."[1] It was chiefly through the influence of this memorial that the Emperor decided to cast off the old custom of isolating himself from the outer world. Together with the "Five Oaths," an Imperial Ordinance was promulgated. It was indeed an admirable embodiment of an advanced idea, full of a vigor and spirit which were overwhelming and irresistible at the dawn of the New Japan. Therefore, the Restoration was not only the restoration of centralized government, of the actual rule of the Emperor; it was the real dawn of the democratic spirit.

Like the constitutions of other countries, the constitution of Japan did not spring into being in a day. As the American people repudiate Mr. Gladstone's words in which he said that "the American Constitution is the most wonderful work ever struck off at a given time by the brain and purpose of man,"[2] we Japanese deny the popular assumption of foreigners that our constitution made a sudden appearance in 1889. We admit simply that the period of the growth of our constitutional idea was relatively short, because we had the advantage of making use of many foreign constitutions in our deliberations.

It is indeed remarkable that a nation whose dominion had been honeycombed by numberless clans, whose ruler was regarded as something supernatural, and which had

[1] I take the liberty of borrowing the translation of the memorial from Dr. Griffis' *Mikado's Empire*.

[2] *Cf.* Fisher, *The Evolution of the Constitution of the United States*, ch. I.

never dreamed of the possibility of the people sharing political power with the sovereign, should suddenly emerge from the older customs and notions and enter into the arena of universal civilization. How can this radical change be explained without recurring to what has been set forth in the previous chapters in respect to the characteristics of the Japanese nation? For my part, I believe that the impulsive mind and quick feeling, combined with the valor and progressive nature of the Japanese, produced this striking reformation. The advantage of the impulsive mind lies in the fact that it quickly sympathizes with what it deems good and virtuous. But its disadvantages are equally great, and perhaps greater when there is no modifying influence.

CHAPTER VI

POLITICAL IDEAS OF CHINA — THEIR INFLUENCE UPON THE DEVELOPMENT OF THE POLITICAL IDEAS OF THE JAPANESE NATION

§ 36. In a previous chapter it was pointed out that Jimmu, the ancestor of the present Japanese Emperor, laid the foundation of the monarchial government in a central part of the main island about the middle of the seventh century before the Christian era. Nearly a thousand years had elapsed between the establishment of the patriarchal monarchy and the introduction of the continental civilization into the insular state. During that interval, the successive monarchs were mostly engaged in subduing and tranquilizing the aborigines and other tribes who immigrated from southern islands and the Asiatic continent after the conquering Aryans.

It seems certain, however, that in the meantime the Japanese people under the patriarchal government made considerable progress in the way of enlightenment, both moral and material. The social relations became wellnigh established, consciousness of kind, or, to use a political expression, national feeling was somewhat developed, and the patriotic spirit manifested itself in an expedition to Corea lead by the Empress Jingu,[1] the greatest female character in Japanese history. It is not at all doubtful that they had already used a crude form of phonetic signs, though no record remains written in primitive characters. It can be seen, therefore, that the Chinese civilization, when brought to Japan, was greatly

[1] "She was equally renowned for beauty, piety, intelligence, energy, and martial valor. She feared neither the waves of the sea, the arrows of the battle field, nor the difficulties that wait on all great enterprises. Great as she was in her own person, she is greater in the Japanese eye as the mother of the God of War."—Griffis, *The Mikado's Empire*.

modified and assimilated by the civilization indigenous to the insular soil. Overwhelming and superior as was the continental culture, it was still a broad tributary which joined the main stream only to swell its flowing tide. Moreover, it is interesting to note, as Dr. Griffis points out in his *Religions of Japan* that foreign civilization cannot exist long in Japan without changing its original character to a greater or less degree.[1] It may be regarded as one of the characteristics of the Japanese people, that they adjust the foreign civilization to their own environments, and not seldom transform it according to their own ideas.

However that may be, it is undeniable that at the end of the second century of the Christian era, the Chinese civilization was high above the Japanese, and that the Chinese influence upon the political and social life of the islanders was truly wonderful. There is a great deal of truth in Dr. Griffis' words when he says that, in the moral and aesthetic conquest of Rome by Greece, although the latter was vanquished by Roman arms, we may perhaps find a close resemblance to the history of Japan, during the second trial of the Christian era.[2] Certainly Japan conquered Corea, the outlet of the continental civilization, by arms, but in culture Japan was inferior to Corea.[3] It was through the semi-insular Kingdom, and not directly from China, that in an earlier period the influences of the "Celestial Kingdom," as China is ironically called by western writers, flowed into Japan. "If Japan," says Dr. Griffis, "is to Asia what Great Britain is to Europe according to the comparison so often made by the modern Japanese —then Corea was to Japan what Norman France was to Saxon England." The comparison is not altogether a happy

[1] "Under the state of things the ethical system of the sage of China suffered a change, as does almost everything that is imported to Japan and borrowed by the islanders, but whether for the better or for worse we shall not inquire too carefully."—Griffis, *The Religions of Japan*, p. 110.

[2] Griffis, *The Mikado's Empire*, p. 75.

[3] Griffis, *Corea the Hermit Nation*, ch. VIII.

one, inasmuch as Japan sent the conqueror to Corea, whereas Normandy sent William across the Channel.

When Jingu the heroic Empress invaded and vanquished Corea, she captured and brought home some Chinese books as well as gold and silver, silk, and precious goods of all kinds. This was the first time that the insular nation came into contact with continental civilization. Ever since that time Corean scholars and artists have come to Japan almost incessantly. Chinese literature on politics and on ethics was studied by the court-nobles and other higher classes. The sovereign himself became the disciple of Chinese sages. Manners and customs, which had probably been barbarously rude, became gradually modified and civilized.

§ 37. We should carefully guard against ascribing shortcomings in Japanese civilization to the influence of Chinese ideas. I am, however, inclined to think that the position of Japanese women was lowered by the introduction of Chinese thought and of Buddhism. Native scholars and some foreign writers also are of the opinion that the women of Japan were formerly more respected and had greater talent than in the later period.[1] In fact traditions tell us that in former times woman was almost the co-equal of man both in domestic and public affairs. Of the one hundred and twenty-three sovereigns who have ascended the throne of Japan eleven were women, some of whom showed considerable ability in administering the government.[2] It has already been indi-

[1] "The women of the early centuries were, according to Japanese history, possessed of more intellect and physical vigor, filling the offices of state religion, and houshold honors, and approaching more nearly the ideal cherished in those countries in which the relation of the sexes is that of professed or real equality. Certain it is that whereas there are many instances of ancient Japanese women reaching a high plane of social dignity and public honor, in later ages the virtuous woman dwelt in seclusion, exemplars of ability were rare."—Griffis, *The Mikado's Empire*, p. 75.

[2] The new constitution of Japan departed from the former custom as to the succession to the throne, providing that the imperial throne shall be succeeded to by imperial male descendants alone.

cated that tenderness toward woman was one of the important characteristics of Japanese chivalry in the feudal ages. On the other hand the humiliation and oppression of woman is one of the conspicuous features of Chinese and Buddhistic ideas. In spite of the overwhelming influence of those alien ideas, the dignity of the Japanese women has not been altogether destroyed, and the earlier idea of woman prevailed to a great extent until the recent regeneration again brought it into the foreground under the new light of western civilization. It ought to be evident to any thoughtful observer that the recent exodus of Japan from its old customs and social system, and the rapid progress she has subsequently achieved, were partly due to the noble character of the women, which survived the overwhelming influence of the continental view of woman. This characteristic of Japanese civilization again makes us conscious that there is something significant in the ethnological composition of Japan.

§ 38. It need hardly be said that China has never had a political philosophy in the sense in which the term is now used. Since Confucius, the greatest sage of the "Celestial Empire," propounded the fundamental principles of politics and ethics, Chinese thought has made little progress beyond his views. As a prime minister of one of the feudal states, he administered the government according to his ideals to the profound admiration of his contemporaries and posterity.[1]

[1] "In the year B. C. 500 Confucius was made a magistrate in his own state, and the most remarkable results soon followed from his new methods of government. He made laws in reference to both the living and the dead. He arranged that the aged should be cared for, and that they should be supplied with good food, so as to make them strong and robust. He decreed that employment should be found suitable for the capacities and strength of all, so that those who were weak should not be burdened with tasks that they could not perform well. He also passed a law that men and women in walking on the public roads should take different sides of it, so that there should be no promiscuous mingling of the sexes, to the detriment of public morals, and he gave orders that valuables that might have been dropped by the way should not be picked up by the passers by, but be left to be found by the owner, who would come in search of them. He was very severe

About a century after Confucius, there appeared another famous thinker, Mencius who stands next to Confucius in the estimation of the Chinese. He elaborated the thought of Confucius and in some instances presented new ideas. The politico-ethical system set forth by the two philosophers was put into books[1] at a later period, and has ever since been the testament of Chinese scholars, statesmen, and people in general. Comments and interpretations have been made on the Chinese Bible, but scarcely any new light has been thrown upon the field of politics.[2] Bureaucracy and centralized government were tried in China, but the fundamental idea of political philosophy, if I may call it such, has remained unaltered. What Chinese statesmen think at the present time of the relation between the ruler and his subjects is nothing more than what Confucius preached to his disciples, four and twenty centuries ago. We must, therefore, examine the thought of this ancient sage as embodied in the Chinese classics, if we undertake to discuss the political idea of the Chinese nation.

Confucius, like Plato,[3] could not distinguish politics from ethics. He explained the relation of sovereign to subject in the same way in which he taught the relation of father to son. Benevolence on one side and obedience on the other,

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against bad work, and he would not allow it to be exposed in the market for sale, and in order to restrain the lavish expenditure incurred at funerals he decreed that the wood of the inner shell of the coffin should be only four inches in thickness, and that of the outer one, five. After one year's experience of these measures there was such a marked improvement in his district that all the surrounding counties began to imitate the examples of Confucius and to adopt his laws. In the year B. C. 496 Confucius was made Prime Minister, and at once a wonderful reformation of manners took place throughout the state."—Macgowan, *A History of China*, pp. 67-68.

For details of the life and teachings of Confucius the reader is referred to G. G. Alexander's *Confucius the Great Teacher*.

[1] These books were translated into English by James Legge, under the title of *Chinese Classics*.

[2] *Cf.* Prof. Reinsch, *World Politics*, pt. II., ch. I.

[3] *Cf.* Pollock, *History of the Science of Politics*, pp. 15-16.

is the keynote of Confucius' view in politics.[1] Like Plato he strictly denounced vicious conduct on the part of the ruler, and recommended wisdom, efficiency, and devotion as the inalienable virtues of the sovereign. But unlike the Grecian philosopher, the Chinese sage never preached the gospel of popular government. "He who at every age as boy and youth and in mature life," says Plato, "has come out of the trial victorious and pure, shall be appointed a ruler and guardian of the state; he shall be honored in life and death, and shall receive sepulture and other memorials of honor, the greatest that we have to give, but him who fails we must reject."[2] Such an idea of watching the future rulers by citizens never occurred to the mind of Confucius. Nor was the tyrannical atmosphere in which Confucius lived favorable to the development of the democratic ideas which had been developed in Greek cities to some extent before Plato expounded it.

According to the Confucian theory, rulers are not responsible for their actions except to some supernatural being, which he calls *Heaven*.[3]

As a matter of fact, "the Emperor worships Heaven pure and simple. It is his place to declare the will of Heaven to the people, which it must be admitted he does with much modesty and reserve. He bears in his own person the blame of Heaven's judgments on the people, humbling himself in sackcloth and ashes to avert the divine wrath. But as none can share his responsibility, so none can share his authority."[4] Such, indeed, was the Confucian conception of the responsibility of the Emperor.

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[1] Griffis, *Religions of Japan*, chs. IV., V.; Joseph Edkins, *Religion in China*, chs. I., X.

[2] Isaac A. Loos, *Studies in the Politics of Aristotle and the Republic of Plato*, p. 225.

[3] For the Confucian idea of Heaven, see Geo. Wm. Knox's *Ki, Ri and Teu*.

[4] A. R. Colquhoun, *China in Transformation*, p. 167.

§ 39. The family, the master-key to all Chinese polity, is a mighty power in support of order. Confucius taught that there is at bottom little difference between ruling the state and regulating the family. Great as is the truth contained in this teaching, it none the less fails to recognize that men must live in wider unions than families, that they have to establish relations and to develop ideas which can never be fully obtained in the family alone.

The nature of the union, which we call the state, is quite different from the character of the union, which we call family. "The prevailing idea in the family, that determines the character of the intercourse between the members is mutual attachment depending on personal relations, to which man is first induced by the ties of consanguinity, on kindness and forbearance, won a degree of disregard of one's own personal consideration. That which renders the family so admirable, so holy, is love, and a continual forgetfulness of a separate individual interest."[1] On the other hand, the fundamental principles of the state which regulate the relation of the ruler to the ruled, of one citizen to another, are justice, legitimacy, and right. The ruler should not demand any services whatever from the ruled without allowing a reciprocal right to the subject. Nor can the subject claim his right, unless he performs the obligations which the state legitimately claims from him. This principle of the mutual obligations, of justice, is no less true in regard to the relation between individual citizens. Filial piety, mercifulness, and righteousness, all these are the characteristics essential to the ruler. But the ruler does not necessarily possess these virtues. He may often be arbitrary, extravagant, vicious, and tyrannical. Hence, the chief danger of representing the monarch as the father of his subjects. "A good despotism is an altogether false ideal, which practically (except as a means to some temporary purpose) becomes the most senseless and dangerous of chimeras. Evil for evil, a good despotism, in a

[1] Dr. Lieber, *Political Ethics*, vol. I., p. 145.

country at all advanced in civilization, is more noxious than a bad one, for it is far more relaxing and enervating to the thoughts, feelings, and energies of the people."[1] Hence the infinite sufferings which have been passed through by the people who regarded the sovereign as their father, and claimed no share in political power. Thus the state differs from the family not only in its size, but far more in its essential character.

It is true that every nation, no matter whether occidental or oriental, was once in the patriarchal stage in which the ruler was regarded as the father of the ruled. But the progressive nations of the West emerged from this erroneous notion a long time ago, whereas in China it has never been done away with. Without exaggeration we may assert that the failure of public administration in China is in no small degree due to the erroneous analogy of family-state and of father-monarch, which has dominated the minds of the people of the colossal empire for thousands of years.[2]

§ 40. I would, however, wrong the Chinese sage if I were to pass over this subject without noticing that his teachings were not totally destitute of democratic thought, though remarkably different from that of Greek philosophy. It is interesting to note that his theocratic view of sovereignty developed a radical idea relative to the legitimacy of govern-

[1] Mill, *Representative Government*, p. 63.

[2] In a long paper left by Dr. Lieber, the following passages were found: "If the principle of the family is applied to a state of any extent, in which personal acquaintance and attachment of some degree becomes impossible, if the patria potesta is applied to the state, or, as the Chinese say, filial duty is the base of the state, it cannot otherwise than lead to absolutism and tyranny. For we have seen that one of the characteristics of the family is the discarding of strict right and the adhering to mutual attachment, while the just authority of the parent is restricted only by this personal attachment and the natural relations of consanguinity. But this personal attachment can not exist in an extensive state, and but in a very limited degree in the smallest one, so that nothing remains but unlimited authority without the moral control existing in the parental relation."—Lieber, *Political Ethics*, vol. I., p. 146.

ment. Confucius thought that sovereignty was a sacred mission intrusted for the time being to the "Son of Heaven," as he calls the monach. This teaching signifies that the emperor must be just, sincere, righteous, and, in a word, capable of meeting the sacred duty intrusted to him by Heaven. Interpreted more fully, it implies at bottom that any sovereign, who does not possess those royal virtues, should not be allowed to rule.

Those passages of Guizot in which he discusses the legitimacy of government may well be quoted here: "This disavowal of violence made by every system proclaims, as plainly as facts can speak, that there is another legitimacy, the true foundation of all the others, the legitimacy of reason, of justice, of right. It is to this origin that they seek to link themselves. As they feel scandalized at the very idea of being offspring of force, they pretend to be invested, by virtue of their antiquity, with a different title. The first characteristic, then, of political legitimacy, is to disclaim violence as the source of authority, and to associate it with a moral notion, a moral force, with the notion of justice, of right, of reason."[1] This idea of justice expounded by Guizot was more or less recognized by the Chinese sage. Indeed his theocratic view, the substratum of which is the idea of justice, gave birth to a more democratic opinion, that the state is not that of the Son of Heaven alone, but that it belongs to the people in general. In a most ancient classic, which was compiled by Confucius, it is laid down that the people have the right to depose a sovereign who either from active wickedness or vicious indolence gives cause to oppressive or tyrannical rule. "Public Opinion," says Huc, "is always ready to check any excesses on the part of the Emperor, who would not, without exciting general indignation, dare to violate the rights of any of his subjects."[2]

Such a radical democratic idea seems hardly reconcilable

[1] Guizot, *History of Civilization in Europe*, p. 69.

[2] A. R. Colquhoun, *China in Transformation*, p. 285.

with the view of Confucius, which regards the monarch as the father of his subjects. The real cause of this self-contradiction lies in the fact that the Chinese have failed to invent means of safeguard against the autocratic power in spite of their professedly democratic ideas. The idea of representative government has been something strange to them. The only means of checking tyranny has been the general uprising—force. Whenever the maladministration of government has become unendurable there have always been mobs, rebellions, and conspiracies, culminating in a change of dynasty. In fact the history of China is a long series of constant alterations in the central power. Whether or not such an anomalous state of things is better than an extreme autocracy without the people having the least idea of democracy is a question worthy of consideration.

Such, in general, are the political ideas of the Chinese civilization. The erroneous comparison of family with state, on the one hand, which brings even the wisest of monarchs into the quagmires of tyranny, and the extremely democratic idea, on the other hand, which is not joined to any legitimate measure of guaranteeing rights to the people, and which naturally manifests itself in a most violent and disgraceful manner whenever the power of the monarch has been unendurably abused,—these are the upper and nether millstones between which the old Empire has been continually ground, resulting in the most miserable condition of her people.

§ 41. Let us see what influence these political principles have had upon the development of the political ideas of Japan. I have remarked elsewhere that the conquering tribe was for a long while looked on as god by the aboriginal tribes. This extraordinary respect for the superior by the inferior race was such as to rouse the sentiment of loyalty in the minds of the subjects when Jimmu, the ancestor of the present Emperor, laid the foundation of the monarchial government. Indeed, loyalty and patriotism are twin children which were born at the very beginning of the Japanese nation, and which still

maintain their existence. Like a great tributary, therefore, the Chinese political ideas, which regard the monarch as the father and as the "Son of Heaven," swelled the stream of loyal feeling which predominated in the minds of the Japanese people of an early period.

The Japanese people who regarded the Emperor as the descendant of *kami* (god) found no idea which was nearer to their own than that which teaches that the ruler rules by divine right. Indeed, the introduction of Chinese thought stimulated that feeling of respect toward the sovereign which had already been planted in the heart of the Japanese nation. Still more, that radically democratic sentiment, which I have just pointed out in the Chinese political ideas, appears to have been greatly modified, or almost overwhelmed, when imported to Japan, by the spirit of loyalty. Hence, during the past five and twenty centuries a usurper has never appeared in Japan. True, military magistrates took the actual sovereignty from the hand of the Emperor for a long period; but even the most powerful of them never ventured to deny formal sovereignty to the throne. On the contrary they always paid homage to the emperor. The moment a magistrate should have attempted to rule in his own name instead of the Emperor's there would have ensued a general uprising throughout the country, ending in the total overthrow of the usurper. Such frequent changes of dynasty as there have been in China is something strange to Japanese mind. But the Confucian idea in regard to the relation between the ruler and the ruled was more completely realized in Japan than in the land where it was preached by the great sage.

That sort of idolatry which ennobled obedience, and made men capable of acts of self-sacrifice not only to the principles of government but to the person of the sovereign, was surely necessary, in a lower stage of civilization, to prevent the insurrection of military chiefs and to consolidate the social combination. But when a nation passes the stage of "military

religious civilization,"[1] using the words of Professor Giddings, and enters into "legal-liberal civilization," such sort of loyalty is surely a great impediment to the development of the idea of freedom and equality. Japan has encountered similar obstacles in the past thirty years, in spite of her relatively rapid progress in the direction of liberal-legal civilization. Even now-a-days, when she has manifestly entered into the stage of "economic-ethical civilization," Japan is not as yet free from this impediment, which will probably continue as such for some time to come.

That today the superstition which deifies the sovereign is about extinct admits of no doubt. Nor should it be inferred from what I have said that the monarchs of Japan have been tyrannical, despotic, and arbitrary, and unscrupulously exacting tribute from the people. On the contrary, that sort of tyranny which stained the pages of the history of the Roman Empire and of the Chinese Kingdom has been altogether unknown in the Imperial court of Japan. It is, indeed, marvelous that successive Emperors have, with a few exceptions, loved their subjects, who in turn have passionately respected their sovereigns; and that whenever military magistrates and ministers have abused their power, deep sympathy has always been expressed from the throne for the misfortunes of the people. This seems to have been due partly to the influence of the Confucian doctrine which urges the ruler to respect filial piety as his foremost virtue. On the other hand, ministers and military magistrates there have been who in the name of the Emperor have availed themselves of Japanese loyalty to satisfy their desire for self-aggrandizement, or to oppress the people and exact tribute from them. Even under the present constitutional government, it is not seldom that the minister shifts his responsibility, "concealing himself behind the sacred sleeves of the sovereign," as it is sarcastically expressed by the Japanese people.

The signs of the times are undoubtedly for the steady

[1] Prof. Giddings, *Principles of Sociology*, bk. III., ch. IV.

development of democratic ideas at the expense of that blind loyalty which predominated in the Japanese mind until only a generation ago. Yet it is worth while to note that there still lingers among certain classes of the people that time-honored feeling of loyalty to be utilized by crafty statesmen and demagogical politicians. How far these statements are true, will be fully illustrated in a subsequent chapter, in which the rise of the social democratic ideas in Japan is discussed.[1]

[1] *Cf. infra*, ch. XVII.

CHAPTER VII

THE INFLUENCE OF RELIGIONS UPON THE DEVELOPMENT OF POTITICAL IDEAS IN JAPAN

§ 42. Whether or not Confucianism is, strictly speaking, a religion, has been much discussed. This controversy does not, however, concern us in this connection since it is the politico-ethical side of the doctrine, and not the religious side, which has played an important part in the development of the political ideas of the Japanese nation. This explains why I have discussed Confucianism in the foregoing chapter. In fact, the Japanese people derived the maxims for their ethical and political life from the teaching of the Chinese sage; but for their conception of the gods and the inspiration of their patriotism, and for their hope of salvation and another life, they turned, and some of them still turn, to Shintoism and Buddhism. As Dr. Griffis in his *Religions of Japan* rightly puts it, "Shinto furnishes theology, Confucianism, anthropology, and Buddhism soteriology."[1] Strangely enough, "in Japan these three different systems of religion and morality are not only living together on friendly terms with one another but, in fact, they are blended together in the minds of the people, who draw necessary nourishment from all of these sources. One and the same Japanese may be and often is a Shintoist, a Confucianist, and a Buddhist. He plays a triple part, so to speak. Our religion may be likened to a triangle.....Shintoism furnishes the object, Confucianism offers the rules of life, while Buddhism supplies the way of salvation. So you see we Japanese are eclectic in everything, even in religion."[2]

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[1] Griffis, *The Religions of Japan*, p. 11.

[2] *The Future of Religion in Japan*, a paper read at the Parliament of Religions by N. Kishimoto, a native scholar.

Thus it can be seen that before the introduction of Christianity the leading religions of Japan had been two, (excluding Confucianism) i. e., Shintoism and Buddhism. It is these two religions which have had a greater or less bearing upon the unfolding of the political ideas of Japan. Undoubtedly, Christianity is steadily gaining ground in the Insular Empire and its mighty influence, its great promise, and its mission in the future are not difficult to foresee. In fact, Shintoism and Buddhism exist merely in form and not in doctrine, by the momentum of a brilliant success which they gained in former times, and not by the vitality of principles contained in their teachings. In short, the two religions have ceased to be the landmarks of religious principle in the Japanese mind.[1] The same fate awaits Confucianism. The rising generation is disciplined by the moral philosophy propounded and recognized by western scholars, while Christianity is slowly but steadily undermining the time-honored edifice of the older religions.

§ 43. Without entering into the future of the Japanese religion, let us discuss the influence exerted by two religions, Shintoism and Buddhism, upon the development of political ideas. Shintoism is indigenous to Japan and traces its origin

[1] This of course does not blind me to the fact that there are recent signs of a regeneration of Buddhism. Younger and progressive elements of Buddhists are endeavouring to reform their hierarchichal administrative organization and to so interpret Buddhistic doctrine so as to meet the necessity of the present society. If their efforts are rewarded with success the future of Buddhism is not necessarily a sad one. Lafcadio Hearn says: "A result of missionary efforts, much more significant than the indispensable yearly report of new conversions, has been the reorganization of the native religions, and a recent government mandate insisting upon the higher education of the native priesthoods. Indeed, long before this mandate the wealthier sects had established Buddhist schools on the western plan; and the Shinshu could already boast of its scholars, educated in Paris or at Oxford,—men whose names are known to Sanscritists the world over. Certainly Japan will need higher forms of faith than her mediaeval ones; but these must be themselves evolved from the ancient forms—from within, never from without. Buddhism strongly fortified by western science will meet the future needs of the race.—Hearn, *Kokoro*, p. 193.

as far back as the beginning of the Japanese nation. It seems not improbable that the prehistoric tribes of Japan worshipped the sun as the highest deity.[1]

This rude sort of monotheism was coupled with the worship of subordinate spirits. When the Aryan conquerors were looked upon as *kamis* (gods) by the aboriginal tribes, they availed themselves of this superstition to strengthen their power and declared themselves descendants of the sun-goddess. Now, Shintoism is founded upon that child-like dogma, which the heroic invaders made use of. Thus, the vital doctrine of Shinto is Mikadoism or "Emperorism," if I may be permitted to coin the word. It deifies the ancestors of the Emperor, and regards the place where the superior race started their conquering career as a sacred place. Many of the Emperors were even deified after death. Of course Shintoism has branches and leaves to conceal the stem; but laid bare, it is nothing but what I have just shown it to be.[2]

"In short, the Mikado tribe, or *Yamato* clan, did in reality capture the aboriginal religion, and turn it into a great political machine. They attempted syncretism and succeeded in their scheme. They added to their own stock of dogma and fetich that of the natives. While recognizing the [earth] gods of the aborigines they at the same time proclaimed the superiority of the Mikado as real vicegerent of Heaven, and demanded that even the gods of the earth, mountain, river, wind, and thunder and lightning should obey him."[3] Such an absurd idea, without that least discrimination, was embodied in and is still maintained by Shintoism. Now-a-days there is scarcely anyone who believes in such child-like dogmas. But in former times the Shinto doctrine was a potent factor in establishing and consolidating the state. It had almost a state-building power. "In Europe it was by alliance with the church that the Germanic nationality first achieved durable

[1] *Cf.* B H. Chamberlain's *Introduction to Ko-ji-ki* or *Records of Ancient Matters*, and his *Translation of the Ko-ji-ki*.

[2] For an exposition of Shintoism see Percival Lowell's *Esoteric Shinto*.

[3] Griffis, *The Religions of Japan*, p. 75.

political creations; thus did Clovis create and Pepin restore the Frankish Empire. In England too, it was religion that first brought the tribes together and laid the foundation of an English state."[2] At the beginning of any state it is religion which plays the most important part in uniting its members under the sovereign.

Now, let us see what results Shintoism has produced on the development of political ideas. The principle of the divine origin of sovereignty itself is, as Guizot said, high, moral, and salutary.[3] Like the canons of the Council of Toledo, Shintoism recognizes that the principal virtues of a king are justice and truth. But the rights of freedom and political security can hardly be reconciled with the principle of religious monarchy, which asserts that sovereign power descends from on high, and does not ascend from the people below. It can easily be seen that Shintoism is diametrically opposed to the idea of freedom and to the principle of popular government. Had its development not been arrested by the overwhelming influence of Buddhism, it would have played by far the most important part in checking the growth of democratic ideas. In spite of its tottering influence in the rear of Buddhism and under the new light of western thought it still finds expression in the constitution of Japan, which declares the Emperor to be "sacred and inviolable."[1]

There is, however, one merit of Shintoism which should not be passed without a notice. I refer to the loving gratitude to the past which is foremost among the moral sentiments of Shinto doctrine. The phase of this religion which teaches us to remember, to respect, and to love, the dead, the past, created in time a marvelous feeling of patriotism as well as of loyalty toward the Emperor. It has also produced a feeling of respect for tradition. Any reformation which enlists the sympathy of the Japanese people must be more or

[2] Seeley, *Introduction to Political Science*, lect. III.; see also Burgess' *Political Science and Comparative Constitutional Law*, vol, I., pp. 59-62.

[3] Guizot, *History of Civilization*, lect. IX.

[1] *The Constitution of Japan*, ch. I., art. III.

less based upon tradition, upon historical descent. This in a measure explains the absence of such terrible revolutions as have been passed through by European nations for the sake of liberty.[1] Let the dead bury the dead, has no application in Japan. Western people easily make fun of our ancestor-worship; but therein lies the philosophy of our patriotism. We do not worship our ancestors for worship's sake. We do not worship them in the same sense as we worship God. We worship them in order to remember the past, to love and revere the dead. This feeling of grateful and reverential love "is probably the most profound and powerful of the emotions of the [Japanese] race,—that which especially directs national life and shapes national character. Patriotism belongs to it. Filial piety depends upon it. Family love is rooted in it. Loyalty is based upon it."[2] And for these sentiments Japan is greatly indebted to Shintoism.[3]

§ 44. When we leave the domain of Shintoism, and enter into that of Buddhism, we find the human mind more depressed through the influence of its teachings. I have said elsewhere that Buddhist prelates have been aristocratic and plutocratic. The criticism should not be taken as against the Hindu thought itself. The teaching itself is a glorification of humanity, and contains an extremely democratic idea. It was first preached against caste and spiritual and secular oppression, and proclaimed all men equally sinful and miserable, and all equally capable of being freed from sin and misery through self-denial and enlightenment. Equality and fraternity were the keynotes of the original doctrine of Buddhism.

[1] *Cf. infra*, ch. XV.

[2] Lafcadio Hearn, *Kokoro*, p. 283.

[3] I do not mean to say that patriotism is an unmixed good. Prejudice, vanity, and selfishness are as well blended together in it along with many better qualities. I hope that the time will come when the federation of the world will substitute the mutual love of humanity irrespective of nationalities for patriotism. Meanwhile, patriotism is one of important conditions of national existence and prosperity.

But religion, like any other organization, requires government and administration; and governmental organization when it grows on a grand scale necessarily produces many grades of honor and authority, and often overshadows its essential principle—equality, liberty, and fraternity. "There is in the very nature of religious society," says Guizot, "a powerful inclination to elevate the governors above the governed; to regard them as something distinct, something divine. This is the effect of the mission with which they are charged; of the character in which they appear before the people."[1] Thus at the present time the Buddhist theory of democracy remains simply as a memory in the midst of a hierarchical organization.

What is still worse, the Hindu religion, when introduced into Japan, did not hesitate to compromise its monotheism[2] to reconcile it with the *kamis* or gods of Shintoism. Prior to the coming of Buddhism, Shintoism had become deeply rooted among court nobles and the people, among the conquerors and the conquered. To convert Japan, therefore, Buddhist missionaries found a syncretism, the union of apparently hostile religious ideas, necessary. Hence, they taught that the *kamis* of Shinto are only the incarnation of the supreme divine being of Buddhism; and that the divine descent of the Emperor is not, therefore, incompatible with the new doctrine.

Such an absurd compromise shows the reason why Buddhism lost its vitality long ago. There should be no such thing as a compromise of truth with non-truth. If the Budd-

[1] Guizot, *op. cit.*, lect. VI.

[2] Whether Buddhism in its origin was a theism or an atheism is open to question. Dr. Griffis says, in his *Religions of Japan*, that Buddhism is atheism, or rather atheistic humanism; that the solution of the mystery of God, of life, and of the universe, which Gautama, the founder of the religion, and his followers attained was one of skepticism rather than of faith; and that it was some time after the death of Gautama that Buddhism decidedly took the form of monotheism, with Buddha as supreme God. For my part, I agree with Dr. Paul Carus, who in a private correspondence wrote me as follows: "Buddhism is in a certain sense atheistic, viz., if you make God mean a personal being; but it is not atheistic if by God is meant the supreme principle of right, the Dhamakâya (the body of the good law), or the Amitâbha (the source of infinite light)."

histic view of God were truth, it ought to have been preached as such without any compromise, whatever danger might have awaited its disciples. To convert is to fight. Any doctrine without the fighting quality is doomed to die sooner or later. It is no wonder that the Japanese people who were thoroughly under the influence of Buddhism, which so easily compromised with what was radically antagonistic to itself, could not develop freedom until the recent Restoration. Buddhism enhanced the "Emperorism" of the Shinto doctrine instead of replacing it. Entering first into the courts, it became aristocratic. Aspiring to temporal powers, and organizing a perfect hierarchy, it has become still more aristocratic as well as plutocratic. Thus, we see that Buddhism has had nothing to contribute to the development of political liberty and equality.

§ 45. Turn to another phase of the doctrine, and we find another obstacle to the development of political ideas,—an obstacle which is as great as that just mentioned.

One of the characteristics of the Hindu religion is its pessimistic tone. It regards this world as one of sin, of evil, of misfortune, and of sorrow. It urges men to get rid of life as soon as possible (provided such riddance is not by unnatural means), in order to attain that state of bliss which is believed to follow from the union and absorption of the human soul in the divine. To unite one's soul in the divine after his death he must sacrifice the love of the world and its vanities, or else he will descend again to the earth for further torture. "With Christian people, life itself and the continuance of life—and the more and fuller the life the better—is an end in itself, to be bought, if need be, by the sacrifice of almost all else besides; but to those poor Hindoos, with ages of despotism, and a certain impassivity of nature inherent and acquired, life, which to us is a blessing, is a real curse and sorrow; and the prospect of birth and rebirth on earth, which would give us no great concern, is as cheerless and hopeless as the rounds of an ever-

lasting treadmill, or an endless journey to and fro across burning or barren sands."[1]

Here lies a vital difference between Christianity and Buddhism. The former derives hope, courage and promise from the very world which the latter looks at with disgust and repugnance. Christ says: "I have come that they might have life, and that they might have it more abundantly." "I have overcome the world." Buddha prays: "Deliver us from existence. Save us from life and give us as little as possible of it." What a gulf exists between the two gospels! The one is hope, the other despair. The former is light, the latter dark. To the Buddhist every worldly affair, be it political or individual, is a painful burden; while with the Christian, it is a right as well as a duty, a privilege no less than a responsibility, for a man to render service for the promotion of the social and individual welfare.[2]

What Guizot said in regard to the nature of religion ought not perhaps be applied to modern Christianity, but it seems especially true when applied to Buddhism. He says: "What is the object of religion? Of any religion, true or false? It is to govern the human passion, the human will. All religion is a restraint, an authority, a government. It comes in the name of the divine law, to subdue, to mortify human nature. It is then to human liberty that it directly opposes itself. It is human liberty that resists it, and that it wishes to overcome. This is the grand object of religion, its mission, its hope."[3] Well, Buddhism is the subjugation of the human will, the chaining of human aspiration. It makes man shrink from worldly complications. What is going on in the political world is of little concern to one who is entirely under the sway of the Buddhist idea. It is as impossible to develop political ideas of obligation among the people of a Buddhistic faith as it is to raise a crop in barren soil.

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[1] J. B. Crozier, *History of Intellectual Development*, vol. I., pt. II., ch. II.

[2] *Cf.* Copleston, *Buddhism*, pt. II., chs. IV. and XI.

[3] Guizot, *op. cit.*, p. 172.

§ 46. Let us go a step further, for there is another doctrine of Buddhism equally detrimental to the idea of freedom. I allude to the doctrine of cause and effect, or the law of causation. It teaches "that each effect in this life springs from a cause in some previous incarnation, and that each act in this life bears its fruits in the next."[1] So far there is much truth in the teaching. Indeed the Buddhist doctrine of causation, or *karma*, as the Buddhist puts it, is in accord with the modern evolution theory of ethics as expounded by Spencer and Huxley. Expressed in modern scientific terms, it stands thus: "The human brain is an organized register of infinitely numerous experiences received during the evolution of life, or rather, during the evolution of that series of organisms through which the human organism has been reached. The effects of the most uniform and frequent of these experiences have been successively bequeathed, principal and interest, and have slowly amounted to that high intelligence which lies latent in the brain of the infant — which the infant in after-life exercises and perhaps strengthens or further complicates — and which, with minute additions, it bequeaths to future generations."[2] "In the doctrine of transmigration, whatever its origin, Brahminical and Buddhist speculation found, ready to hand, the means of constructing a plausible vindication of the ways of the cosmos to man. If this world is full of pain and sorrow; if grief and evil fall, like the rain, upon both the just and the unjust, it is because, like the rain, they are links in the endless chain of natural causation by which past, present, and future are indissolubly connected; and there is no more injustice in the one case than in the other."[3]

Such indeed seems to have been the original doctrine of karma. But when preached to ignorant masses by ignorant Buddhist monks, this doctrine was easily misunderstood. The rank and file of Buddhist preachers have abused the law of

[1] Griffis, *The Religions of Japan*, p. 162.

[2] Spencer, *Principles of Psychology*, vol. I., pt. IV., ch. VIII.

[3] Huxley, *Evolution and Ethics*, ch. II.

causation to an intolerable extent. They have preached that all men of all classes are predestined to be born as such, and therefore they ought to be content with the class into which they are born. Kings and nobles are born as such from the effect of certain causes in some previous incarnation. It is the same with commons and burgesses. According to such a view, it would be next to criminal for the commons and burgesses to claim a share in the political authority which is vested in the Emperor and the nobility. To suppress ambition of any kind, be it noble or ignoble, is the keynote of Buddhistic doctrine.

Man must possess lofty ambition and noble aspiration before he obtains a powerful feeling of personal independence, the assurance of his own liberty, the consciousness of having a destiny with which no will can interfere beyond that in his own bosom. A doctrine which suppresses one's aspiration for a higher grade of society, is decidedly opposed to the development of freedom. It cannot be denied that even in Christendom there was a time when the laity had no further share in the government of the Church than to be mere lookers-on; when theology was the privileged territory of the clergy; when the doctrinal belief of dogma or the Church was transmitted from the highest authority downwards, throughout the whole religious body, without allowing anyone the right of examining it for himself; when the Christian "looked upon the state as alien to himself and the inner principles of his life," forming "a part of it, as he formed a part of the world in general, as a stranger and pilgrim;"[1] and when the tone of the preachers was no less pessimistic than the Buddhistic teachings regarding humanity as inherently sinful.

But through the cloud, the true teaching of Christ was incessantly shedding its rays, culminating at last in the great religious revolution of the sixteenth century. The religious revolution had begun through ideas and discussions purely intellectual; but it had, almost immediately, led to political

[1] Paulsen, *A System of Ethics*, bk. I., ch. II.

events. The leaders of the intellectual parties had very speedily become leaders of political parties; the realities of life had mingled with the workings of intellect. Political emancipation was the unavoidable outcome of religious emancipation, the emancipation of human thought.[1] Thus the stupendous movement for political freedom in England, in France, in Germany, and in all other European countries, was the unforeseen but necessary result of the Protestant agitation.[2] Mr. Morris in his Hegel's *Philosophy of the State and of History*, rightly says: "Finally, with the Germanic world, and under the inspiration of Christianity, we come to the age of full maturity, whose mission is to comprehend and carry out the truth that freedom is the birthright of all men."[3]

The case has not been the same with Buddhist countries. In them there has never been that tremendous religious revolution pregnant with social and political reformations. The whole mind of society has been ennervated and made pessimistic through the influence of the Hindu philosophy.

We should not, however, forget our indebtedness to Buddhism which was of great service in modifying the impulsive nature inherent to the Japanese nation. The idea of self-renunciation joined by impulsiveness produced a peculiar type of moral instinct not altogether hurtful. Hence Japan's social life has not been as gloomy and pessimistic as that in other Buddhistic countries.[4]

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[1] It is of course misleading to say, as does Dr. Lyman Abbott in his *Rights of Man*, that modern democracy is the outcome of the conquest of Hebraic democracy over Roman Imperialism. Prof. Dunning is right when he says that Dr. Abbott's "reasoning wholly ignores the very extensive apparatus of anti-hierarchic theory that had been developed, during the fourteenth and fifteenth centuries, out of the political works of Aristotle." We cannot ascribe the growth of modern democracy to any single cause.—*Political Science Quarterly*, March, 1902, pp. 150-1; *Cf.* Abbott's *Rights of Man*.

[2] *Cf.* Godkin, *Unforeseen Tendencies of Democracy*, p. 29.

[3] Morris, *Hegel's Philosophy*, p. 136.

[4] I do not wish to be dogmatic in my view concerning Buddhism. More than five thousand volumes of classical authorities were left by earlier exponents of Buddhism. I have often been told by reliable Japanese

§ 47. Before concluding this chapter, it will be worth while to dwell briefly upon the Christianity of Japan. So far the discussion has been almost altogether retrospective, for Shintoism and Buddhism have nearly lost their vitality and their influence upon the minds of the Japanese people. With the discussion of Christianity the method will be reversed. It must be prospective of the future, because the new religion of Japan has as yet had but a slight influence upon the development of political ideas.[1]

We have noticed elsewhere that Buddhism first entered into the Imperial court and was preached among the nobles. The case was quite different with Christianity. It was first preached among the lower classes, among sturdy men and women, who live by the sweat of their brows. From the very beginning of its career in Japan it has been democratic, very decidedly opposed to aristocracy. Its preachers are fighters as well. They know no compromise. They do not hesitate to deny the divine descent of the Emperor, and openly declare that there are no *kamis*, or deities, except one and the only one whom they believe as omnipotent. We can at once perceive how their attitude towards the Emperor differs from that of the Buddhists and Shintoists. To preach truth, permit me to repeat, is to fight. And it is this fighting attitude that the Christian preachers possess. If this gallant spirit does not ebb, the future of Japanese Christianity promises to be a great success, not only in the diffusion of religious ideas but also in the development of democratic ideas. At first the propagation of Christianity was threat-

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authorities on Buddhism that in philosophical profundity Buddhism is above Christianity. I will simply be glad to find myself mistaken in my criticism on Buddhism. The value of Christianity lies, I believe, in the fact that it furnishes us with the conception of ideal human life, of ideal home. As for the conception of self or of soul, I think that Buddhism is more philosophical and more in harmony with scientific thought. It may be said that Gautama appealed to reason, while Christ appealed to feeilng,

[1] For the career of Christianity in Japan see John H. Gubbins' *Review of the Introduction of Christianity into Japan and China.*

ened both by the public and the government. But the threatening had become less and less until the freedom of belief was definitely recognized by the Constitution promulgated in 1889. The twenty-eighth article of the Japanese Constitution reads as follows: "Japanese subjects shall, within limits not prejudicial to peace and order, and not antagonistic to their duties as subjects, enjoy freedom of religious belief." Marquis Ito, framer of the Constitution, commenting on this article says: "Freedom of conscience concerns the inner part of man and lies beyond the sphere of interference by the laws of State. To force upon a nation a particular form of belief by the establishment of a state religion is very injurious to the natural intellectual development of the people, and is prejudicial to the progress of science by free competition. No country, therefore, possesses, by reason of its political authority, the right or the capacity to an oppressive measure touching abstract questions of religious faith."[1]

The white harvest field is laid open before the Christian workers, whose indefatigable toil will no doubt influence the whole range of Japanese civilization.[2]

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[1] Ito, *Commentaries on the Japanese Constitution*, p. 54.

[2] I do not mean to say that Japan needs an army of Christian missionaries. Foreigners can hardly understand our moral ideas and racial instincts, which in certain respects are, I believe, superior to those of Christian nations in spite of their manifold defects. Without a thorough knowledge of moral ideas and emotions inherent in the Japanese, foreign missionaries may do harm rather than good. Lafcadio Hearn is right when he says: "Christian mission-work must be left to native missionaries; for just as Buddhism never took definite form in Japan until the teaching of its doctrines was left entirely to Japanese priests, so Christianity will never take any fixed shape till it has been so remodeled as to harmonize with the emotional and social life of the race."—*Kokoro*, p. 142.

CHAPTER VIII

THE ADVENT OF WESTERN POLITICAL IDEAS IN JAPAN

§ 48. In previous chapters[1] I gave the historical antecedents which led up to the modern political ideas of Japan. It might have seemed more convenient then to enter directly into a consideration of our own period, of the political institutions and ideas of New Japan. But it has been Chinese political ideas, joined by Shintoistic and Buddhistic thought, which western thoughts and institutions have been steadily replacing during the past thirty-five years. That is the reason why I have cast a glance backward over the old political principles, over the politico-ethical idea of Confucianism, over the theory of the divine descent of sovereignty, and over the baneful influence of Hindu philosophy, before taking up the discussion of the growth of occidental thought in Japan.

It may be worth while to survey briefly our foreign intercourse previous to the Restoration. It is generally alleged by foreigners that exclusion was the policy of Japan from the first. This is a mistake. Prior to the latter part of the sixteenth century foreigners were entirely free to come and dwell in Japan. It is worthy of note that in 1549 a Jesuit clergyman came to Japan to propagate his religion and that, too, under the protection of a military magistrate of that time he and his successors were so successful as to reap within twenty years a harvest of 300,000 souls from the highest and the lowest walks of life. Forty churches and monasteries besides several chapels were established.

Unfortunately, only a short time passed before a horrible persecution befell the Christian believers. The immediate cause of the persecutions is not definitely known. It seems

[1] See especially Ch. V.

probable, however, that "the impetuous character of the native converts, the ingratiating acts and the popularity of papists among the masses, the domineering behavior of the priests, their claim to miraculous powers, the one novel doctrine that there was a king of kings to whom allegiance was primarily due, and the vicar of this king did actually reign in Rome,"[1] and a Spanish naval officer's imprudent statement to the effect that missionaries are sent abroad as the pioneers of conquest—all these, together with attempts at conspiracy, prompted a persecution no form of which had ever before disgraced the pages of our history. The persecution of Christians and the exclusive policy are amply justified if we consider the treacherous character of early Christian missionaries.[2] The year 1637 saw the promulgation of an *exclusive* and *inclusive* edict which prohibited foreigners from landing on the Japanese coast and the natives from going to foreign countries, in order to prevent the introduction of Christianity.[3]

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[1] Dr. Nitobe, *The Intercourse between the United States and Japan*, p. 11.

[2] For the missionary as the forerunner of the *conquistador*, see Reinsch, *Colonial Government*, Ch. III. See also Y. Kinoshita, *The Past and Present of Japanese Commerce*, pp. 59–85.

[3] "A little before the above law was passed, many bold spirits had sought in other lands a wider field of gain, achievement and fame. One steered a course to Hindostan. A merchant of Nagasaki had a princess of Siam given him in marriage for the services he had done in a war with Goa. Another Japanese made his way to Siam, and for his military valor was made a governor of two of its provinces. In 1583, the two Southern Princes of Arima and Omura dispatched an envoy consisting of four persons of rank to the Roman Pontiff. After they had been three years on the way, they arrived in Lisbon, and passing through Spain reached Rome, where they were cordially welcomed by Gregory XIII. They were still in the Holy City when the Pope died. At the coronation of his successor, Sixtus V., they were knighted. They traveled through central Italy, feted everywhere. It was after eight years of absence that they returned home, taking with them a reinforcement of seventeen missionaries. In 1613, while the persecution was hotly raging, Date, a prince of large province in the East, secretly dispatched his vassal, Hashikura, to Rome. A man of daring ambition, Date looked beyond the narrow precincts of Japan for the sphere of his activity. Hashikura was advised to place himself in the centre of European

§49. This exclusive edict summarily arrested the growth of Japan's foreign intercourse, and kept the Japanese within the narrow precincts of their own islands. The Portuguese, Spanish, French, English and Russians often knocked at the doors of the hermit island in order to enter into some kind of negotiation for international communication, but in vain. The Dutch, who were always friendly to the Japanese welfare, and whose purpose was purely mercantile, unmixed with religous policy, were alone allowed to settle in Deshima, a small island in front of Nagasaki. Not only merchants and traders, but also physicians and scholars came from the Netherlands; and the small isle of Deshima soon became the window through which Japan looked at the whole Occident, just as St. Petersburg was, according to Peter the Great, a window through which Russia looked upon the civilization of western Europe. It must be admitted to the great credit of the Netherlanders that we first became acquainted with the western sciences and the arts of engineering, mining, pharmacy, astronomy, and medicine through these foreign residents in Deshima.

At the beginning of the last century, so numerous did the Japanese scholars of Dutch civilization become in Yedo (now Tokyo) that "there arose two Dutch schools, the Down-town and the Up-town—the latter devoting its attention to the study of western history, politics, and military and naval tactics, the former to that of medicine and kindred sciences."[1] Thus it can be seen that western ideas concerning politics appeared in Japan as early as the beginning of the eighteenth century. Unfortunately it is not known what books on poli-

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politics and watch their movements; in a word, he was sent as a spy. Thrown amidst religious influences, he soon deserted his worldly master and professed himself a Christian proselyte. He was given knighthood by the Pope, but on his return home in 1620 as a reward of his conversion, he was put to death."—Dr. Nitobe, *The Intercourse between the United States and Japan*, pp. 14 and 15. See also C. Meriwether's *Life of Date Masamune*, and E. M. Satow's *Notes on the Intercourse between Japan and Siam in the Seventeenth Century*.

[1] Dr. Nitobe, *op. cit.*, p. 26.

tics the pioneers of western civilization studied. Freedom of conscience was so restricted that the Dutch scholars could not publish what they learned from occidental books, without incurring severe penalties. From the fragmentary writings of two leaders of the Up-town party, Takano and Watanabe, it is understood that they studied the few works on political economy then current in European countries.

Although Dutch became a favorite study with enlightened young men, and considerably widened the intellectual field of the Japanese nation, those who could undertake the study were limited to the higher classes of society, and consequently their number was so small that western civilization could not spread throughout the length and breadth of the country. Moreover, the absolutism of the military magistracy then in power was so intolerant toward the free discussion of politics in the light of western ideas, that the study of the Dutch scholars was finally confined to the narrow sphere of material science, such as medicine, military tactics, &c. Hence, the influence of Dutch civilization upon the political ideas of the Japanese nation was next to nothing. It constitutes, however, the dawn of western political ideas in Japan. This dawn was soon followed by a full flood of daylight.

§ 50. While the hermit nation was thus shutting itself off from the outer world, the tide of civilization was incessantly pressing forward from the West to the East. Ships from several European countries frequently plied off the coast of Japan. Some of them certainly came for purely mercantile purposes, but it is equally certain that others came on political missions with the intention of gaining new territory in the Far East. Thus, fifty or sixty years ago a ballad entitled "Song of the Black Ship," which is really a picture of huge western ships as they then appeared to Japanese eyes, resounded throughout the length and breadth of the country.[1]

[1] The song translated by Dr. Nitobe is as follows:

Thro' a black night of cloud and rain,
The Black Ship plies her way—

It was when this prophetic song was being jauntily sung by ignorant men and women, though it gave warning to many intelligent minds, that an American squadron under the command of Commodore Perry suddenly made its appearance in the Bay of Tokyo.[1] We can easily imagine the consternation into which the whole population of Yedo was thrown at the news of an alleged "foreign invasion." "In all directions were seen mothers flying with children in their arms, and men with mothers on their backs. Rumors of an immediate action, exaggerated each time they were communicated from mouth to mouth, added horror to the horror-stricken. The tramp of war-horses, the clatter of armed warriors, the noise of carts, the parade of firemen, the incessant tolling of bells, the shrieks of women, the cries of children, dinning all the streets of a city of more than a million souls, made confusion worse confounded."[2] Nor was

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An alien thing of evil mien—
Across the waters gray.

Down in her hold, there labor men
Of jet black visage dread;
While, fair of face, stand by her guns,
Grim hundreds clad in red.

With cheeks half hid in shaggy beards,
Their glance fixed on the wave,
They seek our sun-land at the word
Of captain owlish-grave.

While loud they come—the boom of drums
And songs in strange uproar;
And now with flesh and herb in store,
Their powers turn toward the western shore.

And slowly floating onward go
These Black Ships, wave-tossed to and fro.

[1] *Cf.* Callahan, *American Relation in the Pacific and the Far East*, pp. 72–84. The date of Perry's arrival at the Bay of Yedo is July 8, 1853. For a very minute description of Commodore Perry's expedition to Japan, see *Narrative of the Expedition of an American Squadron to China Seas and Japan performed in the years 1852, 1853, and 1854*, Vol. I, published by the government of the United States.

[2] Dr. Nitobe, *op. cit.*, p. 46.

the commotion restricted to the vicinity of Yedo. The ballad of the Black Ship was sung louder than ever before, the alarm was carried even to the remotest corners of the country, and the gossip about "foreign devils"[1] disturbed the most peaceful minds of mountain villagers.

But the "foreign devils" soon proved to be friends, who came to enlighten and advise, but not to subjugate, the sons of the "Fairy Land." We cannot recall without a sense of gratitude that Commodore Perry was uncommonly patient and sympathetic in persuading the secluded nation to open their ports to foreign communication, and in making them aware that there were in the West highly civilized countries, from which they could derive the benefits of learning and the arts by entering into communication with them. The labor of the American Admiral was finally rewarded by a treaty of commerce signed on the thirty-first day of March, 1854. No sooner was the conclusion of the commercial treaty between the United States and the military magistrate of Japan reported to the West than the other powers struggled to extort the same privilege from the islanders. The external pressure joined with several other causes. called forth national unity, which brought about the recent Restoration. Hence, we may rightly say that, if the dawn of western civilization in Japan was brought about by the Dutch, Commodore Perry and his successors brought the brilliant rays of daylight. A fine monument erected on the seashore where Commodore Perry first landed, and dedicated to the American benefactor of Japan, is but a token of our gratitude for the generosity and broad-mindedness of the American nation which introduced us to the arena of the world's civilization.

§ 51. Now let us observe the political reformation which took place immediately after the Restoration.

The direct and apparent aim of the Restoration was simply

[1] For the Japanese nation's estimation of Easterners before the Restoration see Lafcadio Hearn's *Kokoro*, pp. 177–184.

to restore the usurped sovereignty to the Emperor. In other words, it was a movement to replace the absolutism of the military magistracy by an absolute monarchism. Like the promoters of the French Revolution, the leaders of the Restoration movement could with a few exceptions hardly foresee its ultimate goal, and were unconsciously treading the path which necessarily leads to the gate of liberal government.

The promoters of the Restoration were nevertheless unmistakably working for the cause which soon proved to be most fruitful in the political development of their country. They proclaimed through the Emperor, then newly ascended to the throne, that all measures should be decided in the light of public opinion, that an assembly should be convoked in order to promote the welfare of the people, and that intellect and learning should be sought for throughout the world. Attention must be called to the fact that one of the workers for the reformation urged the Emperor to do away with the pompous etiquette of the court and to adopt simplicity as the first attribute of government. In addition to these reformative ideas, the mighty tide of western thought was already sweeping the shores of the country. Everything now seemed to favor the growth of the idea of popular government. Previous to the Restoration, the masses had been prohibited from discussing political affairs, while the industrial class or commons had been refused the right of official appointments. Such a state of things was completely broken up soon after the reformation, and an edict was issued to the effect that all the people should be allowed the right of free discussion in politics, and of being appointed to office.

The Reformation brought many changes into governmental organization. It was of course impossible to abolish feudalism, which had become deeply rooted in Japanese soil during hundreds of years, all at once. Hence, feudal nobilities, numbering almost three hundred, maintained a foothold in their respective localities for some time after the Restoration. The centralized government, organized immediately after the Reformation, was not, strictly speaking, a centralized govern-

ment. In some respects, it resembled the German Confederation. The central power was restored to the Emperor, but the local government, still feudalistic, was excessively powerful.

It is worthy of note that the germ of a bicameral legislature already appeared under this federalistic form of government. The organization of two legislative chambers was ordained by the Emperor. The upper chamber was composed of princes of the blood royal, ministers and vice-ministers of state, and court and feudal nobles. The lower chamber was composed of deputies appointed by the feudal governors. From the composition of the two chambers it can easily be seen that the legislative body was nothing but the production of older political ideas wedded to the western form of representative government. Through a few Dutch scholars and some Japanese who had returned from a mission to occidental countries, the organizers of the new government heard of the legislative regime prevailing in the West. To statesmen disciplined in old political thought, however, it must have been uncommonly hard to get a clear idea of the western system of representative government.

Nor was it possible to transplant to the virgin soil of Japan that advanced form of government without some modifications. Every reformation needs a certain period of preparation. Reformation without preparation is neither healthy nor desirable. The representative government of European countries had its germ in the free cities of the eleventh century, while the principles of the American Constitution, both federal and state, can be traced to the colonial polity. It is inconceivable that a nation, which was ruled under a military magistracy and separated from the outer world for hundreds of years, should realize advanced principles of government all of a sudden. Hence, the first legislative chambers of Japan may well be compared to occidental furnitures put into oriental buildings. The improvements thus brought about were certainly great, but the main principle of the government was still oriental. As I have already said members of neither house

were elected by the people, but appointed by the Emperor or feudal lords. The idea of representation was not yet realized. Nevertheless, I do not hesitate to regard the early legislative body as the beginning of representative government in Japan.

The two chambers were not coördinate. The lower chamber had no power to initiate laws, and could carry on its business only under the direction of the upper chamber. The chief matters upon which both houses had to deliberate were: framing of the laws, concluding of treaties, declaring of wars, levying of taxes, &c. It must be borne in mind, however, that the upper chamber was not simply a legislative and deliberative body; it was also an executive body. On the one hand it had the nature of a cabinet, which represents the government, while on the other it was much like an executive council. Here again it will be seen that western political ideas were not thoroughly digested by the founders of New Japan. The legislative department was not strictly separated from the executive, although the programme of the government declared that the distribution of functions among the three departments was the foremost necessity. The workers for the Restoration were not thinkers or scholars, but practical statesmen. They had practical problems to solve. They adopted only those reforms which they deemed necessary and expedient for the time being. Thus it was not simply because the Japanese failed to understand fully the nature of representative government, but also because they thought it inexpedient and impossible to adopt the occidental regime all at once, that the first legislative body of New Japan presented very peculiar features.

§ 52. It is interesting to note that the principle of the tripartite form of government, as expounded by Montesquieu in his *Spirit of the Laws*, was already known by the founders of the new government. A coterie of persons, who had been dispatched to Europe for the purpose of concluding treaties, came in contact with the idea of the French thinkers, and one

of them when he came home translated a part of Montesquieu's book into the Japanese language. The translation emphasized particularly those parts in which Montesquieu treats of the organization of government.

"When the legislative and executive powers are united in the same person," says Montesquieu, "or in the same body of magistrates, there can be no liberty; because apprehensions may arise, lest the same monarch or senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty, if the judiciary power be not separated from the legislative and executive. Were it joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control; for the judge would be then the legislator. Were it joined to the executive power the judge might behave with violence and oppression. There would be an end of everything, were the same men or the same body, whether of the nobles or of the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions, and of trying the cases of individuals."[1]

Having inspired the statesmen of the Restoration, the principle of tripartite government found its expression in the programme of 1868, which declared that the functions of the ministry or central government should be divided into legislative, executive, and judiciary departments, and that legislative officers should not hold any executive office, and vice versa. It must be noticed that the application of the doctrine of the French jurist and historian was by no means thoroughgoing. It was only applied to the central government. Neither was it declared anywhere that executive or legislative officials should not perform judicial functions. Thus, the vital principle set forth in the *Spirit of the Laws* was manifestly evaded. It is needless to say that what Montesquieu had in mind was not merely the division of departments, but the independence of persons in different departments.

This principle of the separation of powers was, however,

[1] *Spirit of the Laws*, Vol. I, p. 163.

either consciously or unconsciously violated by the pioneers of the new government. In fact the early government of New Japan may be compared, so far as the division of power is concerned, to the republic of Venice, where, although the legislative power was in the *council*, the executive power in the *pregadi*, and the judicial in the *quarantia*, these tribunals were composed of magistrates all belonging to the same body which constitute almost one and the same power.[1]

Despite all its defects and incompleteness, the form of tripartite government which was adopted was pregnant with salutary effects, which, though unforeseen, were none the less influential in turning the minds of the statesmen and of the people to a new stratum of political thought. As expounded by Montesquieu, the distribution of power among several departments aimed to guarantee liberty; and the motive of Japanese statesmen in adopting the theory evidently was not that of merely dividing labour among governmental employees. Certainly they took the promotion of liberty and justice into consideration as an important factor of the new theory. They were fully aware that absolute monarchy is one of the worst forms of government, and that a constitutional monarchy like England, where the king reigns but does not govern, is salutary and adaptable to Japanese soil. It is true that the tripartite government encountered many vicissitudes and alterations during the early period of New Japan, and often sank into obscurity. But its moral influence and significance has never faded, ending finally in the establishment of a constitutional government in 1890.

§ 53. Before leaving this chapter, let us add a few words in regard to the organization of the ministry. I have stated elsewhere[2] that, in the middle of the seventh century, eight departments were placed under the Council of State, which consisted of the Chancellor of the Empire, the Minister of the

[1] *Spirit of the Laws*, Vol. I, p. 164.

[2] Cf. *supra*, Ch. IV.

Left, the Minister of the Right, and the First Adviser of State. With the Restoration this organization of the government, which had been long obsolete on account of the military magistracy, was restored with more or less modification.

In 1871, four years after the Restoration, the Council of State was reëstablished in conjunction with the eight departments, viz., Department of Foreign Affairs, Department of Treasury, Department of War, Department of Education, Department of Industry, Department of Justice, Department of Imperial Household, and Department of Religion. Over the eight Departments the Council of State retained a controlling and supervising power. The Council was composed of the Chancellor of the Empire, the Minister of the Left, the Minister of the Right, the Councillors of State, together with the Ministers and vice-Ministers of State in different departments. Thus, it can be seen that the organization of the Ministry was a very complicated one. The ministerial system in its modern sense was still unrealized by the founders of the new government. The functions of the Ministers of State were simply to carry out the orders and notices issued by the Council of State. Whereas, according to the present system of our government, Ministers of State are the sole components of the Cabinet they were simply a part of it in the early government of New Japan. Such a peculiar form of government was maintained until 1885, when the offices of the Chancellor of the Empire and of Councillors of State were abolished and the eight Ministers of State which I have just mentioned were replaced by the newly established ten Ministers of State who made up the Cabinet directly responsible to the Emperor.

§ 54. Such was the political condition of Japan for several years succeeding the Restoration. Such were the effects which the influence of western thought wrought upon the organization of government. Feudalism still existed by the side of professed centralization. Executive, legislative, and judiciary functions were often vested in one and the same person under an apparent tripartite government. The Legis-

lative body was composed of the great officials of the central government, and members appointed by the feudal nobles, without a single member elected by the people. Indeed, confusion of occidental with oriental ideas revealed itself clearly in the governmental organization of rejuvenated Japan. With the total abolition of feudalism in 1871, however, centralization was completely realized, and the Insular Empire advanced a step further in the direction of political reformation.

Let us proceed, in the next chapter, to observe what changes took place in the ideas of the people in regard to Politics, while the improvement just mentioned was going on within the government.

CHAPTER IX

GROWTH OF THE IDEA OF FREEDOM

§ 55. With the advent of western political ideas Japan at length came into her inheritance. With a rapidity without parallel she has sprung from feudalism to modernity, from despotism to liberalism. The idea of freedom which was exhilarating Europe and America since the great French Revolution and the American Emancipation finally made its way into the Far East. The proclamation that all men are equal which went forth from Independence Hall and from Versailles at length found her disciple in the "child of the world's old age."

Absorbingly interesting in the history of the political development of the world at large is an event such as this. It is a milestone upon the path through which the grand idea of humanity marches on to carry her mission into the remote corner of the world.

While the government was, as we have noted in the previous chapter, eagerly engaged in reforming its organization, the people were no less earnest in their inquiry into western thought in regard to the right and liberty of subjects. They became acquainted, though vaguely, with the idea of representative government which prevailed in the occidental countries. The information, that beyond the Pacific Ocean there lies a country where the chief executive, or sovereign, as the islanders understood it, is elected by the vote of the people and does not ascend to the throne by virtue of hereditary right—this information was borne in with force upon the nation which had just emerged from feudalism. They were still more surprised when told that in some countries the people had often pulled the king down from the throne, which to our

forefathers was actually sacred and inaccessible, merely for the sake of liberty. What confusion reigned in Japanese minds for several years after the Restoration! What a conflict—a conflict between the new ideas and the old—agitated the island nation at that transitional period!

With the memory of the military magistracy fresh in their minds, and still under the rule of absolute monarchy, the rank and file of the people could scarcely realize the true significance of democratic government. Fortunately, however, there appeared several men of foresight whose indefatigable toil and effort were devoted to the guidance and enlightenment of the people, and who paved the way to Japan's rapid advance towards a constitutional government. We shall presently see under what banners the pioneers of advanced political thought led their followers.

It is very difficult to analyze and generalize the various movements which appeared upon the stage in the early days of New Japan. The creeds of different parties were not so conspicuous as to make it possible to distinguish one from another. Nevertheless, we can perceive, if we observe carefully, some essential features distinguishing the doctrines propagated by the different schools. According to these special features, we may classify the schools into three, i. e., the economic, the liberal, and the paternalistic. Each of the three schools started from different points, and, in many respects, entertained different views. But all of them worked, at least in one respect, for one and the same end, namely, the advancement of the idea of freedom, although the workers themselves might have been unconscious of this end.

I must, however, call the attention of the reader to the fact that there existed no organized body which might be called a political party at this early period. I wish to be understood, by the word school which I use here, to mean a certain group of persons who advocated certain principles and yet entertained no organized relations with each other. The time was not yet ripe for an organized movement for civil and political liberty. Hence, the toil and energy of the inaugurators

of the western politics were solely directed to the education and discipline of the people by means of writing and speaking.

§ 56. The economic school first appeared in the field. Under its banners almost the whole nation seemed to march for a certain period. The prophet of the economic school was found in the person of the late Mr. Fukuzawa, who possessed the qualities of a reformer in large measure. Undaunted, zealous, and full of vigour and enthusiasm, he boldly pointed out the necessity of destroying every phase of the social regime of the old Japan, in order to make way for advanced institutions. He defied class distinction, mocked at nobility, denounced absolutism, and challenged every thing that tended to put restraint upon the full exertion of human energy. But he was not a revolutionist like Mirabeau or Robespierre; he was not the man to be satisfied with simply destroying. On the contrary, he was a man of common sense, in spite of his seemingly radical nature. He was fully aware of the urgent necessity of constructing as well as of destroying. He was neither a philosopher nor a profound thinker, nor a blind revolutionist; but a practical reformer. In some respects, he may be compared to Bentham, who "was a man, practical, public-spirited, philanthropic, a clear and vigorous reasoner, a man to interpret and express the practical aspirations of Englishmen at bottom fond of liberty, haters of oppression, but also, from long instinct, and, until greatly provoked, law abiding—a man, too, with a new and seemingly simple moral philosophy, and with a new political philosophy very different from Burke's, and suitable to their purpose." [1] Such a practical reformer is especially needed during a period of transition in which every thing is in chaos and awaits the reformer's hand to be destroyed and rebuilt. We may doubt the profundity of his thought, we may fail to appreciate highly the philosophical value of his writings, but we do not hesitate to accept him as one of the most important figures in the formation of New Japan.

[1] W. Graham, *English Political Philosophy*, p. 176.

I call Fukuzawa's political ideas economic because his thought of freedom and equality is expounded from an economic point of view. Like Adam Smith, he insists upon the necessity "of allowing every man to pursue his own interest his own way, upon the liberal plan of equality, liberty and justice," [1] in order to promote industry and to increase national wealth. Like Bentham, he would say that the true aim of law and government is the greatest happiness of the governed, which consists chiefly in four things—subsistence, abundance, equality, and security. Any restraint upon the free exertion of individual ability Mr. Fukuzawa denounces as an impediment to the economic growth of the nation, and therefore to the promotion of the general welfare. Hence all men, he claims, ought to be free and equal. It is doubtful whether he studied thoroughly the utilitarianism of Bentham and Mill; but his views were singularly similar to those of the English thinkers. Throughout all his writings economic discussion stands in the foreground, while political theory appears simply as a secondary consideration. Starting from an economic point of view, he nevertheless goes so far as to regard the relations between the sovereign and the subject as a mutual agreement, and to sneer at the death of martyrs, who sacrificed themselves to protect the throne, as no less meaningless than the suicide of a mad man. His views are sometimes shallow, fragmentary, and incoherent; but surely he was the man who possessed the constructive mind that divises and applies cure for evils.

Besides the economic view, there was another motive which inspired the zealous reformer for the propagation of liberty and equality,—I refer to the declaration of rights in the American Republic and in France. Having twice crossed the Pacific Ocean to this side of the water, and having gone through the European countries both before and after the Restoration, Mr. Fukuzawa came in contact with the idea of freedom and equality which was animating the American

[1] Adam Smith, *The Wealth of Nations*, bk. IV., ch. IX.

nation and was still agitating France. The Declaration of Independence, and the Bills of Rights in many of the state constitutions, together with the French Declaration of the Rights of Man must have impressed him deeply with the democratic idea. Under such impressions his work on *The Condition of the Western Countries*,[1] which had a sale of more than three hundred thousand copies,[2] was written. At the beginning of another work, he proclaims that "Providence does not create man either above or below man," which is simply another expression of the first and fundamental article of the Declaration of Rights, enacted by certain states of the American Union, i. e., "that there are certain natural rights, of which men, when they form a social compact cannot deprive or divest their posterity, among which are the enjoyment of life and liberty, with the means of acquiring, possessing and protecting property, and pursuing and obtaining happiness and safety."[3] It is chiefly through the influence of his writings that the idea of freedom has been spread among the masses.

Significant as was the influence exerted by him and his followers upon the political field, by far the most prominent part which they played was in the domain of social reform. Besides, they did not care to meditate upon the fundamental problems of political theory, e. g., the end of the state, location of the sovereign power, and such like. They were too practical to meditate upon such abstract philosophical questions. They preferred equality and liberty to inequality and oppression, simply in behalf of economic progress. So long as the sovereign remains faithful to the welfare of the people, they would not fight against absolute monarchy. Thus the influence of Fukuzawa was not after all in the direction of political reform, although his efforts as a great social reformer

[1] Not accessible in English.

[2] I. Yamagata, *The Late Mr. Fukuzawa*, an article in The Orient, a monthly English magazine published in Japan.

[3] Constitution of North Carolina, in Poore's *Charters and Constitutions*.

have been crowned with much success. We should never forget, however, that through this great social reformer the vital spirit of human liberty, as embodied in the Declaration of Independence of the United States, and the Declaration of the Rights of Man of the French Republic, was diffused throughout the Insular Empire, although he himself might have been unconscious of the fact. Moreover, political reform cannot bear fruit in a country where the social conditions are not advanced so as to be readily adjusted to advanced political ideas. Hence, the toil of the economic school was not after all unfruitful of political reforms.

§ 57. The second school, which I call the liberal party, was in many respects like the economic school. But it differed from the latter in that it strove to reform the social and political condition not only from the material side but from the moral side as well. Against the materialistic view of the economic school, the liberalists insisted that the augmentation of national wealth and the progress of commerce and industry are of little value when they come divorced from moral culture. Nor is it possible, they hold, to import and maintain the advanced political principles of the West without cultivating the moral character of the people in accordance with the moral principles which underlie the whole fabric of the social and political system of occidental countries. They perceived that the ethical idea which has upheld the social regime of Japan was swiftly being swept away by the formidable waves of the recent political revolution without bringing about as yet any new moral principle in its stead, and that the people were left in the dark as to the ideals of moral conduct. In such a transitional period it is very dangerous to propagate materialistic ideas like those which Mr. Fukuzawa maintained in his early career.

Thus the late Mr. Nakamura, leader of the liberal school, preached the gospel of Jesus Christ together with the principle of human liberty as expounded in Mill's *On Liberty*. In fact this leader seems to have been thoroughly inspired by

the writings of the English economist. Soon after the restoration the translation of *On Liberty* appeared from his pen. From the detailed commentaries inserted in the translation to illustrate the practical application of liberalism, we can easily see how hard it must have been to convey the idea of liberty as maintained by the English scholars to minds which had just emerged from feudalism. The appropriate region of human liberty, according to Mill, "comprises, first, the inward domain of consciousness, demanding liberty of conscience in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological." Secondly, it involves "liberty of tastes and pursuits; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow, without impediment from our fellow-creatures, so long as what we do does not harm them even though they should think our conduct foolish, perverse, or wrong." Thirdly, it includes "the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others." [1] Such ideas, together with the principle of representative government as an organ through which the will of people manifests itself, could hardly have been understood by the masses without great patience on the part of the pioneers of this advanced thought in Japan.

Like the economic school, the liberal school supported utilitarianism as the goal of political activity; but the latter seems to have more clearly and definitely understood the true significance of the principle than did the economic school. The utilitarian doctrine, as advocated by Mill, is not necessarily as materialistic as the economic school of Japan at first understood it to be. First expounded by Bentham, and then improved by Mill, utilitarianism has in consideration "utility in the largest sense, grounded on the permanent interests of man as a progressive being." [2]

[1] J. S. Mill, *On Liberty*, ch. I.
[2] J. S. Mill, *On Liberty*, ch. I.

Apart from the psychological exposition of hedonism to the effect that pleasure is the motive of decisions or acts,[1] I see no reason why one should oppose utilitarianism, which holds that any activity, individual or social, must aim at the highest happiness of the greatest number of social members. But if the term happiness implies, as was thought by the economic school, the merely material wellbeing, then we should decidedly protest against it; because such a doctrine is too apt to degrade the character of both the individual and the nation. The pioneer of Mill's doctrine, Mr. Nakamura, was a man who could foresee the degrading effects which materialism might bring to the national character.

It is interesting to note that the character of the representative of the liberal school was much more like that of Mill than like that of Bentham. Comparing the character of the two English thinkers, Mr. Graham says: "Like Bentham, he [Mill] was a philanthropist and 'humanitarian;' like him, he was a political reformer as regarded his own country; much more than Bentham, he was an ardent believer in progress, moral, political, and intellectual, for the human species, above all, for those races already in the van. He (in himself) was a nobler, more cultured, and higher character than Bentham, and he cherished ideals with regard to his fellows that never visited the somewhat prosaic and commonplace mind of Bentham."[2] While Fukuzawa, the leader of the economic party, resembled Bentham in many respects, Nakamura certainly possessed many of the qualities of Mill.

Although the two schools, economic and liberal, disagreed in many respects, they both agreed upon what was by far the most important point, i. e., the principle that the freedom of the people must be fully recognized as limiting the governmental authority over the individual to the greatest degree possible. Thus both parties interpreted the function of the government in its very narrowest sense. In short they were

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[1] *Cf.* Paulsen, *System of Ethics*, bk. II., ch. II.

[2] Graham, *English Political Philosophy*, p. 271.

the advocates of the *laissez faire* principle as expounded by many English thinkers.

It should be remembered that in his later years Mill was surely conscious of dangers of the radical *laissez faire* doctrine which he had advocated in his earlier years, although like other practical thinkers he still remained faithful to his earlier view. Indeed, his socialistic idea which is found in his *Autobiography*[1] can hardly be reconciled with his individualism as set forth in *On Liberty*. I wish to emphasize the fact that Mill's theory, when first introduced into Japan, came isolated from his broad view of social amelioration — his socialistic view in which he says that he is "not charmed with the ideal of life held out by those who think that the normal state of human beings is that of struggling to get on; that the trampling, crushing, elbowing, and treading on each other's heels, which from the existing type of social life, are the most desirable lot of human kind, or anything but the disagreeable symptoms of one of the phases of industrial progress."[2]

Consequently, individualism, as understood by the Japanese pioneers of western thought, was more individualistic than conceived by John Stuart Mill. "Restrict the field of governmental function as much as possible, and allow the individual as broad a field of activity as possible," was the motto which they maintained and propagated. Such a radical liberalism, although now repudiated by advanced political and economic theory, might certainly have been necessary to emancipate Japanese minds which had long been oppressed under the weight of feudalism. But a thinking mind can hardly fail to perceive that such a strict limitation of governmental function is not in harmony with the end of the state, i. e., the perfection of national life. Nor is it difficult for cautious thinkers to understand that no definite and permanent line can be drawn between what belongs to governmental authority and what does not. The field of governmental activity as Adolph

[1] *Op. cit.* ch. VII.

[2] W. D. P. Bliss, *Mill's Socialism*, p. 11.

Wagner, an eminent exponent of the new economic school, conceives it, can hardly be said to be either too broad or too narrow, without considering time, place, and circumstances. Not satisfied with the view of the economic and liberal parties in regard to the legitimate authority of the government, the third school, which I call the paternalistic school, sprung into being.

§ 58. The third school is referred to as the paternalistic school because it asserts that the welfare of the people will be attained by legal reform, by the execution of legitimate authority by the government, and by correcting the abuses of power which survived the abolition of the feudal regime. They cried out against, and earnestly desired to put a stop to, arbitrary imprisonment, the cruel treatment of prosecuted persons and convicts, and they denounced absolute monarchy in no uncertain terms. So far their opinion does not differ from that of the other two schools. But, unlike the economic and liberal schools, the paternalistic school insisted upon the necessity of extending the function of government not only to the maintenance of public peace and the security of person and property, but also to "the development of the national capacities, the perfecting of the national life, and, finally, its completion."[1]

Against the *laissez faire* principle, as expounded in *On Liberty*, the members of the paternalistic school turned to Bluntschli for the solution of the problem of the function of government. In fact, *The Theory of the State* of the German author was translated into Japanese and lectured upon before the Emperor by a Japanese pioneer of the German school, Mr. Kato,[2] (now President of the Tokyo Imperial University) a few years after the Restoration. With Bluntschli, the paternalistic school asserts that liberalism and individualism,

[1] Bluntschli, *The Theory of the State*, bk. V., ch. IV.

[2] Of his earlier writings, *Principles of New Administration*, *A New Interpretation of National Polity*, and *Theory of Natural Rights* are well known. None of them are accessible in English.

when practically applied, results first, in the neglect of economic interests; secondly, in the neglect of common intellectual interests; thirdly, in the paralysis and death of public spirit in the nation, and thus weakening of the power of the state; and fourthly, in the encouragement of a petty and pedantic system of laws, the result of which is a litigious temper fatal to the authority of the state.[1] While, on the one hand, believing in the freedom of the people, they advocated, on the other, a broad interpretation of the functions of government, including all activities which are necessary for the perfection of human life. Thus, this school nearly reached the theory that the function of government signifies, as Professor Burgess holds, a readjustment by the state, from time to time, of the relation of government to liberty; and that "in the modern ages, the state works, thus, through government and liberty, and accomplishes many of its fairest and most important results for civilization through the latter."[2]

As the paternalistic school were greatly inspired by Bluntschli, who was not entirely free from the prejudices of the country to which he belonged, the tendency of their thought was to strengthen the power of the sovereign as well as of the government. But the tide of equality and liberty was so overwhelming that even the leader of the paternalistic party did not hesitate to deny the divine right of the king and his absolute power. On the contrary, he sincerely warned the people that there is something false and dangerous in this notion of the divine origin of the sovereign. He certainly understood the significance of Bluntschli's statement to the effect that "the dignity and power of the monarch are regulated by the constitution," and that "the constitutional prince does not stand *outside* or *above* but *in* the constitution."[3] He and his co-workers were fully aware that absolute monarchy is repudiated in the modern theory of politics as the worst form of

[1] Bluntschli, *op. cit.*, bk. V., ch. III.

[2] Burgess, *Political Science*, vol. I., pp. 83–89.

[3] Bluntschli, *op. cit.*, bk. VI, ch. XVI.

government. Hence, they were no less ardent in desiring the establishment of constitutional government. On this point the paternalistic school joined hands with the economic and liberal parties. Thus the three schools were, though unconsciously, working for a common end, namely, the development of the idea of freedom.

The principles advocated by the paternalistic school were more complex and not so easily understood by the masses of the people as those which were propagated by the other two schools. Besides, the paternalistic school favored the strengthening of the governmental authority, while the other two were against it. Consequently the paternalistic school had a greater influence in official circles, while the other two schools were enthusiastically welcomed by the people at large. On the one hand, German political theory as expounded by Bluntschli, on the other hand, the idea of liberty and equality as embodied in the American Declaration of Independence, in the French Declaration of Rights, and, above all, in the writings of English economists, the former more or less aristocratic, the latter evidently democratic, the one approaching the government, the other converting the masses—such was the condition of the political world of Japan during the six or seven years succeeding the Restoration.

In the meantime the daily press and the art of public speaking made great progress. Without these two organs, democratic ideas can never grow. While such rapid progress of political ideas was going on among the people, a coterie of high officials sent in a memorial to the Council of State urging the latter to convoke a legislative chamber composed of members elected by the people. With the presentation of this memorial, the Japanese nation entered upon an advanced stage of political development.

CHAPTER X

THE ERA OF POLITICAL AGITATION: THE ESTABLISHMENT OF POLITICAL PARTIES

§ 59. There has been no nation which has established a constitutional government without encountering many hardships, vicissitudes, and reactions. A constitution, whether granted by a King or drafted by a convention, is at bottom a confirmation of popular rights extorted from the sovereign who, without the pressure of the people, would never volunteer to divide his power. The King of England is not the only ruler who has been forced to accept and abide by a constitution. The sovereigns of all constitutional countries have had a similar fate. Hence, constitutions have been, more or less, the result of violent actions on the part of those who have secured them.

Besides, wherever a democratic movement has been set on foot there has at the same time been a reactionary movement. Even the philosopher Hume, in despair over the corruption and tyranny of the factions which once prevailed in the English Parliament, concludes that "we shall at least, after many convulsions and civil wars, find repose in absolute monarchy, which it would have been happier for us to have established peaceably from the beginning."[1] Such reactionary thought always goes along with a democratic movement. Even the Republic of the United States was not entirely free from a similar experience.

Although Japan has never witnessed such terrible convulsions as many of the western nations have passed through for the sake of liberty, yet her constitution would never have been promulgated if the people had not struggled for it. Therefore, I believe that the statement, which has been gen-

[1] H. J. Ford, *The Rise and Growth of American Politics*, ch. II.

erally made by Japanese jurists and statesmen, that the constitution of Japan was granted by the King in a period of peace and tranquillity, and that the people had nothing to do with it, is misleading. It would be more accurate to say that it was extorted from the Emperor by the people. Neither could the constitution come into being without overcoming manifold difficulties and reactions. How far these my own views hold true will be made evident in the following pages.

§ 60. In the foregoing chapter it was stated that a number of high officials urged the establishment of a representative legislature. It is worthy of note that their motives in advocating such a democratic scheme of legislation seem not to have been altogether a sincere desire to promote the welfare of the people. Prior to the presentation of their memorial, the cabinet members were divided into two parties, Imperialists or Militarists on the one hand, and Internal Reformists or Civilians on the other. The Imperialists insisted upon territorial expansion and were truly "Imperialists" in the sense in which the term is used among us to-day. Against this opinion, the Reformists insisted that the reformation of internal conditions must precede external expansion, or national aggrandizement, as it were. Just at the time when the two parties were in constant hostility a conflict took place between Japan and Corea. Thereupon the Imperialists strongly argued that the conflict gave Japan a good opportunity for subduing and annexing Corea. Those who had taken an active part in subverting the military magistracy and restoring Imperial rule were full of vigor and spirit and desirous of witnessing a glorious expansion of the Insular Empire. But a greater number of the cabinet members, including the Prime Minister, firmly opposed the military policy. Dissatisfied and disgusted with the rejection of their opinion, the Imperialists withdrew from the ministry all at once, and took up the problem of popular government as a weapon with which to attack their opponents. They insisted, in their memorial to the Cabinet, that a legislative chamber consisting

of representatives of the people should immediately be convoked. Thus Militarism and Imperialism, which in their nature are opposed to freedom, disguised themselves under the mask of popular legislation, and seemingly fought for the cause of democracy.

Here let us pause a moment and consider what would have been the probable effects upon the development of freedom if the war had been fought for the glory of Japan. For my part, I believe that, had Japan conquered Corea (and I believe she was able to do this), our constitutional government would not have been realized as soon as it was. Militarism, enhanced by war, is always liable to hinder the growth of freedom. The history of Rome and of France furnishes us the best illustrations of the statement. The case may be different where self-government has been in vogue for a long time, because the people in such a country have the means and the intelligence to check the influence of militarism to a considerable extent if not entirely. There is a vast deal of truth in Professor Giddings' words: "In the earlier days, republican institutions were cherished only here and there in exceptional communities, and they were threatened on every hand by the hosts of military despotism; to-day they are rooted in unnumbered communities, which only now and then are diverted by war from the normal pursuits of peace." [1]

When the subjugation of Corea was firmly insisted upon, the political status of Japan hardly reached the level of that of the Roman Republic or the Republic of France at the time of Napoleon I. "Rome conquered the world, but at the cost of her republican simplicity. Florence and Venice achieved wealth and splendor, but bowed to despotism. France overrun Europe with her armies, and then enthroned her own military dictator." [2] A common fate would, I believe, have befallen Japan had she overrun the Corean peninsula. The dazzling glory of the conquest would surely have over-

[1] Giddings, *Democracy and Empire*, p. 298.

[2] Giddings, *op. cit.*, p. 297.

whelmed the democratic tendency which was then fairly in progress.

Even at the present time, and even where democracy is firmly established, I am not as positive as Professor Giddings that military activity need not be feared for its influence upon liberty. I do not, of course, mean to say that territorial expansion or military activity is able to destroy the institutions of popular government. But I believe that military glorification has a tendency to hinder the growth of democratic ideas. Why are the Prussians, who once fought so gallantly for the cause of liberty, silently submitting to the present constitution, which is seemingly democratic but really imperialistic? Has not the political condition of Prussia been very different from that of those countries to which Professor Giddings refers? Yet she has not been altogether free from the common result of militarism. "Have not the resurrection through fire and blood of the old Empire upon the field of battle, have not Düppel, Königgrätz and Sedan been for something in the evolution of German thought?"[1] Our recent victory over China furnishes us a kindred example. Glorification of the ruler and of military officers seems to be a necessary outcome of victorious war, and its moral influence cannot but be unfavorable, although it may not be disastrous, to the development of democratic ideas. Such is the case especially where the ruler reigns by virtue of supreme authority, by divine right.

§ 61. The Imperialistic statesmen, who proposed the subjugation of Corea, resigned instantly when their proposition was rejected by the majority of the Ministry. This resignation brought about a result which was unforseen yet significant in the political development of Japan. One result was a stronger cohesion among the cabinet members; the other a greater enthusiasm among the people for the democratic movement. Previous to that time, the Cabinet had been composed of persons holding apparently different political views

[1] Charles Borgeaud, *Adoption and Amendment of Constitutions*, p. 78.

to the detriment of ministerial unity. Such a lack of unity had frequently caused many difficulties in administering the government. Shortly before the resignation of the dissatisfied statesmen, a coterie of cabinet members, whom I have called Internal Reformists, visited the western countries and learned that the ministries of representative countries were composed of those who maintain the same political views. Hence the withdrawal of the Imperialists proved to be a good opportunity for the Internal Reformists to form a new Cabinet taking advantage of what they had learned from their western trip. The event, therefore, may be regarded as an advancement towards the cabinet system under parliamentary government.

When a memorial urging the convoking of a representative legislature was sent to the Council of State by the dissatisfied statesmen, great excitement and enthusiasm for liberty were caused throughout the length and breadth of the country. Before that time equality and liberty had been simply preached. No actual movement had been inaugurated for the realization of the ideal. With the event I have just mentioned the state of things began to change, and a practical propaganda was begun. Thus, at the beginning of our democratic movement we may observe a very peculiar phenomenon,—we see that Imperialism or Militarism proceeds hand in hand with Democracy. The statesmen who had resigned from the Cabinet and whose opinion was unmistakably Imperialistic, were received by the people with great enthusiasm, since immediately after their resignation they proclaimed that they would fight for the cause of liberty.

The political agitation, which was set on foot almost immediately after the presentation of the said memorial, was not altogether healthful. It was in a sense harmful. Insurrections broke out, assassinations occurred, political fanatics driven to despair by the conservative attitude of the government killed themselves, and many treasonable plots were formed among the democratic agitators. On the other hand, the radical conservatives who were decidedly opposed to

western civilization, no matter whether material or moral, were no less restless. Some of them conspired against the government, though they were instantly suppressed. A still greater insurrection was conducted by a leader of the dissatisfied Imperialists, causing a great convulsion throughout the Empire. From 1875 to 1883 the whole country was in a state of agitation. It would be needless to dwell upon the events which took place during this era of great political upheaval.

There is one thing, however, that we ought not to overlook, viz., the inauguration of political parties. It was in this period of turmoil that two great political parties, the Liberal and the Progressive-Conservative, sprang into being. Over against the two parties, a coterie of persons on the side of the government organized a third party under the name of the Constitutional-Imperial Party. The former were opposition parties, while the latter stood by the government. While a constant agitation was disturbing the country, the members of the ministry were not necessarily the advocates of absolutism; but they considered it too early to adopt the representative system of legislation. Openly or secretly they recognized the necessity of establishing the advanced method of legislation sooner or later. They insisted, however, that before its inauguration, the people must be more thoroughly fitted to adapt themselves to the new regime. Under the cloak of such a view, they struggled against the democratic movement. But the time finally arrived when the conservative government could no longer stem the tide of liberalism. The resul was the promulgation of the Imperial Rescript of 1880, which promised to grant to the people a constitution in ten years. Had the Emperor postponed the promulgation of the promise a few years longer, our nation would surely have witnessed more violent uprisings, more fearful agitations, and more revolutionary actions, in spite of their unparalleled loyalty to Royal family.

§ 62. We have seen that our constitution, like the consti-

tutions of western countries, is the result of popular agitation and of extortion. As the eminent German jurist Kluber said, "the act of framing a constitution is by its very nature reciprocal, it is an act between parties both of which alternately give and receive."[1] I do not believe that there is, strictly speaking, such a thing as the granting of a constitution by the sovereign. It is a conspicuous characteristic of constitutions belonging to the German branch that when the princes recognized the necessity of a fundamental written law, their first idea was to grant it themselves, by virtue of their supreme authority which they assume they possess by themselves. But if it may be said that the princes grant certain rights to the people by the constitution, it may also be said that the people grant no smaller privileges to the princes by the same constitution. It may be said that as the King assents to the constitution it is established through the forms of existing law; but this would be a very extreme use of legal fiction. The only legal form of consent which exists or can exist when the King is sovereign is his free consent, and the only kind of limitation which he can suffer is self-limitation, which might at pleasure be thrown off.[2] Neither Magna Charta, nor the Constitutions of any other Monarchy, was framed in such a manner. However anxious the conservative statesmen may be to disguise the truth, the plain facts of history can not be concealed.

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[1] Borgeaud, *op. cit.*, p. 47.

[2] Burgess, *Political Science*, Vol. I., pp. 91–97.

CHAPTER XI

SOURCES OF THE POLITICAL IDEAS OF THE LIBERAL PARTY

§ 63. In the foregoing chapter I have mentioned the fact that three political parties were inaugurated during the turbulent period of political agitation, namely: the Liberal, the Progressive-Conservative, and the Constitutional-Imperial Parties. It will be the aim of the present and the chapters next following to discuss the characteristics of these three parties, especially as to the sources of their political ideas.

It need hardly be said that a political party is composed of men of like views and like principles. One will make a great mistake, however, if he supposes that political principles are the sole bond which unites the members of a political party. "The real bond is the consciousness of kind in its entirety, including sympathies, instincts, agreements in beliefs, and other forms of emotion and prejudice that unite men in political action." [1] Man often maintains political principles markedly different from the principles of a party to which he belongs; yet he dare not withdraw from the association simply because he feels more sympathy for it than for other organizations. Differences of parties are no less in matters of sympathy than in matters of principle. That is why we frequently encounter much difficulty in undertaking to ascertain the causes which separate one political party from another.

Nevertheless, we must admit that political principles are a main factor in the composition of any political party. "No political party is as homogeneous as it would be if the sympathetic and sentimental elements of the consciousness of kind were its sole animating power." [2] Hence, we can perceive

[1] Giddings, *Elements of Sociology*, ch. XVIII.

[2] Giddings, *op. cit.*, ch. XVIII.

essential differences between the Liberal Party and the Progressive-Conservative Party, in spite of their apparently similar manifestoes, if we trace their political ideas to their respective sources.[1] As to the Constitutional-Imperial Party, its characteristics are so conspicuous that we find no difficulty in perceiving the points of difference which separate it from the remaining two parties.

In a previous chapter[2] it was shown that three schools of thought, not formally organized, however, into political parties, had considerable influence during several years succeeding the restoration. These I called the economic, the liberal, and the paternalistic.

In the present and in the chapters next following, we are dealing with actual political parties which are strikingly different from those schools of thought which we discussed in the previous chapter. Not only does each of these complete political organizations possess a definite programme, but their political views in contrast to those of the earlier schools of thought have become greatly widened through the influence of western literature on politics which has incessantly poured into Japan. It is rather difficult to state the relation of the later political parties to the earlier schools of thought in a summary manner, because the political ideas of the people have undergone a remarkable change, or, more properly, a wonderful progress, during the several years of great political agitation which I have described in the previous chapter. The Liberal Party, under view, is not simply a formal organization of an unorganized party of an earlier time which has been called the liberal school; but it appeared with new political ideas considerably different from and perhaps more

[1] Mr. Bushby made a great mistake when he said that the Japanese political parties are the outcome of the mere feeling of jealousy among the so-called clan-statesmen. He ignores the potent fact that the political parties of Japan were inaugurated by those freedom-loving men, who, inspired by writings of modern European thinkers, aspired to realize a constitutional government. *Cf.* Bushby's *Parliamentary Government in Japan*, in the Nineteenth Century Review, July, 1899.

[2] *Cf. Supra*, ch. IX.

advanced than those of the earlier. The same holds true in regard to the Progressive-Conservative Party and the Constitutional-Imperial Party. I shall try, however, to state as clearly as possible in what manner the new parties are related to the older ones.

§ 64. The Liberal Party was inaugurated in the fall of 1880, with the following programme:

I. We aim at the full extension and permanent preservation of the freedom and rights of the people.

II. We aim at the promotion of the welfare of the people as well as the progress of the country.

III. We believe that all men ought to be equal in respect to their rights.

IV. We believe that a constitutional government is most adaptable to our country.

A glance at the manifesto will impress us with the idea that the Liberal Party was unmistakably moved by the democratic spirit as embodied in the Declaration of Independence of America and in the Declaration of the Rights of Man and of the Citizen of France in 1789. In fact, the history of the French Revolution and of the formation of the American Republic seems to have inspired the promoters of the party. They would say, with the workers for the cause of American emancipation, "that all men are created equal, that they are endowed by their Creator with certain inalienable Rights," and "that to secure these rights, Governments are instituted among men, deriving their just powers from the consent of the governed."[1] Or they would argue, with the sons of the French Revolution, that "men are born and remain free and equal in rights,"[2] that "the aim of all political association is

[1] The Declaration of Independence of the United States of America, in Ford's *Writings of Thomas Jefferson*, Vol. II.

[2] Declaration of the Rights of Man and of the Citizen. Art. I., in the *Original Sources of European History*, Vol. I., No. V., published by the University of Pennsylvania.

the preservation of the natural and imprescriptible rights of man,"[1] and that "the principle of all sovereignty resides essentially in the nation."[2] Thus viewed, we can easily see that in certain respects the Liberal Party shared the ideas of the economic school under the leadership of the late Mr. Fukuzawa. But the similarities of the two parties are much fewer than the differences, as the Liberals do not base their theory of equality and liberty upon economic principles as the economic school did. The former were rather abstractionists; whereas the latter aimed at practical reforms.

§ 65. Here, it will be worth while to dwell upon the question as to how far American ideas concerning the rights of man influenced the Liberal Party and consequently, to a certain extent, the political ideas of the Japanese nation in general. The place which the American nation occupies in the history of the constitutional development of the world has been long unrecognized. Indeed, the American nation has been wronged by the ignorance not only of the unthinking, but also of prominent jurists and scholars of political science. Even in England and France it was quite recently that the importance of the American state constitutions began to be recognized, while in Germany they have remained as yet almost unnoticed.

The Federal Constitution of the United States has, to be sure, been known in Europe since its formation, but the constitutions of the individual states, which are no less important than the Federal Constitution, have just begun to be appreciated. No wonder that in Japan even the most prominent jurist is utterly ignorant of this important fact. Among the Continental writers who fully recognize the influence of the American nation upon the constitutional development of Continental states, Charles Borgeaud, of France, and George Jellinek, of Heidelberg, Germany, are conspicuous. Borgeaud

[1] *Ibid.* Art. II.

[2] *Ibid.* Art. III.

says: "John Adams had hardly finished his plan for a constitution before he was compelled to embark for Europe. Charged, for the second time, with a mission to Louis XVI., he sailed, November 13, 1778, carrying his scheme with him, to show friends of his country in France. Franklin, who had just succeeded Voltaire in public favor, had preceded him, bearing his own production, the Pennsylvania constitution. At that moment the thought of American liberty inspired Paris and all France with enthusiasm..... In 1783, Franklin, at that time living in Passy, caused all the constitutions of America to be translated and published. The collection at once became famous. Everywhere the constitutions were warmly discussed—in the salons, at the clubs, at court, in the city, in the country."[1]

The following passages from Jellinek's *Rights of Man and of Citizens* shows us more clearly how influential the constitutions of America were in France, and consequently in Europe: "In the National Assembly, however, it was Lafayette who on July 11, 1789, made the motion to enact a declaration of rights in connection with the constitution, and he therewith laid before the assembly a plan of such a declaration..... The declarations of Virginia and of the other individual American states were the sources of Lafayette's proposition. They influenced not only Lafayette, but all who sought to bring about a declaration of rights. Even the.....cahiers were affected by them..... The French Declaration of Rights is for the most part copied from the American declarations or 'bills of right.' All drafts of the French Declaration, from those of the *cahiers* to the twenty-one proposals before the National Assembly, vary more or less from the original, either in conciseness or in breadth, in cleverness or in awkwardness of expression."[2]

From these quotations we can at once perceive the wide and far-reaching influence of American politics. It has spread

[1] Borgeaud, *Adoption and Amendment of Constitution*, p. 21.

[2] Jellinek, *op. cit.*, ch. III.

not only into continental Europe, but also into the Insular Empire of the Far East. This fact has been ignored in Japan, since the remarkable French Declaration of Rights was well-known among the Japanese, while the American "bill of rights" was but vaguely known. Besides, the history of the French Revolution is so dazzling that the Japanese aspirers for freedom were thoroughly under its spell. Our ignorance has been proved by the two authorities from which I have freely quoted. We might say that American influence did not reach Japan directly across the Pacific, but across the Atlantic, and through Europe—through the French Declaration of Rights of Man and of the Citizen. It is true that Mr. Fukuzawa, the leader of the economic school, was familiar with the Declaration of Independence, but his influence upon the political development of Japan was not so great as upon social reform. We should fully recognize, however, in that ultimate analysis we owe to the American nation our conception of human rights.

§ 66. A second source of the political ideas of the Liberal Party was Rousseau's *Social Contract*—that remarkable book which once held the whole continent of Europe under its spell. In England and America its influence was hardly perceptible.[1] But if we pass from the two great English-speaking communities to Continental Europe, we find that Rousseau's influence was indeed overwhelming both in the history of events and in the history of ideas: "in the history of events, for the large part it had in shaping the most tremendous convulsion of modern times; in the history of ideas, which are after all important only as appearing in action after a longer or shorter circuit, as containing the most striking statement of a theory destined to mould profoundly the history of nations, as being even now the arsenal whence are drawn the weapons

[1] Ford, *The Rise and Growth of American Politics*, ch. V.; and Lecky, *Democracy and Liberty*, Vol. I., ch. I.

Departing from the opinion of most writers, Professor Willoughby fully recognizes Rousseau's influence upon American politics. He says: "In addi-

which are first sharpened and polished and then directed against the whole framework of the modern state."[1]

Before entering upon the discussion of the *Social Contract*, let us dwell upon what may be called the historical pessimism of Rousseau as expressed in his earlier writings. His two prize essays, *The Discourse on the Sciences and Arts* (1750) and the *Discourse on the Origin of Inequality Among Men*, are no less prominent and had no less influence upon the development of European, especially German, thought than did the *Social Contract*. In the two discourses, Rousseau preached historical pessimism with greater passion and eloquence than in the *Social Contract*. In his *Discourse on the Sciences and Arts*, he boldly asserts that the revival and development of Sciences and Arts have brought moral decay and contributed little to advancement of morals. He regards the primitive state of man as a state of innocence and virtue, from which civilization is deviating more and more. The nearer we approach the original state, the more purity and virtue we find.[2] Such a pessimistic view in regard to the social degeneration may be regarded as a reaction against the optimistic conception of history, and is not founded upon a scientific basis, its tone being essentially sentimental. As a consequence of the scientific investigations of history, our historical conceptions have become widely different from those of Rousseau. "The leaders of the seventeenth century transferred the golden age from the past to the future, and the eighteenth century systematized the new view, conceiving history as a steady progress from meagre beginnings to a state of glorious perfection, which, it was supposed, would be

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tion to the great influence which the theories of Locke and Rousseau had upon English and European thought and politics, a most profound influence was exercised upon political thought in America. The Compact theory is recognized in the preamble of the Declaration of Independence, and is explicitly accepted in nearly all of the Bills of Rights of the constitutions of the various commonwealths of our Union."—*The Nature of the State*, ch. IV.

[1] Professor Edward L. Walter, in the introduction to the *Social Contract*.

[2] *Cf.* Paulsen, *A System of Ethics*, bk. II., ch. IV.

realized in the period of enlightenment."[1] In spite of all his fallacies and misconceptions, Rousseau's literary influence, as the champion of sentimentalism and as the prophet of nature, was once truly irresistible. Kant, Fichte, and Hegel, and even those eminent poets, Goethe and Schiller, became his disciples, and historical pessimism revealed itself in almost every phase of German thought.[2]

Unfortunately, or fortunately, for the Japanese nation, his pessimism as expounded in his earlier writings has had small influence upon the minds of the Islanders. It was the *Social Contract*, and not the *Discourse on the Sciences and Arts*, nor even the *Discourse on the Origin of Inequality Among Men*, that exerted so remarkable an influence upon Japanese thought. Hence, the influence has been upon politics, and not upon morals; upon the conception of government and freedom, and not upon the view of human life.

It is a common-place opinion that Rousseau preaches "Return to Nature" no less emphatically in the *Social Contract* than in his prize essays. His early view of society, we are told, had not changed by the time he wrote this book. A very careful examination of the work, however, will show us that his pessimism was considerably modified after he had written

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[1] Paulsen, *op. cit.*, bk. II., ch. III.

[2] "His [Rousseau's] literary influence, as the prophet of nature and feeling, and the champion of sentimental religion against the *Philosophes*, carried everything before it. He struck into the path which had been opened in Germany by the translation of Thomson's *Seasons* before 1750, and followed by the Swiss critics and the idyllic poets, who were opponents of the dominant pseudo-classicism. Jacobi, who passed some years of his youth at Geneva, owed his doctrine of feeling as the faculty of religious truth in part at least to Rousseau. Klinger, whose drama, *Sturm and Drang*, gave its name to the romantic and naturalist revolution, marked by Goethe's *Götz von Berlichingen* (1773) and Schiller's *Rauber* (1781), was responsible, we are told, in later years, for the surprising judgment that Rousseau (in *Emile*) is the young man's best guide through life. Even Schiller and Herder passed through a period of enthusiastic admiration for Rousseau. It is exceedingly significant that Schiller's *Letters on the Aesthetic Education of Humanity* are addressed expressly to the problem of reconciling the claims of Nature and of the State upon individual man."—Bosanquet, *The Philosophical Theory of the State*, ch. IX

the famous prize essays, and that he certainly struggled to reconcile the paradox which naturally resulted from this change of his opinion. It seems to me that the French philosopher was not entirely free from the vanity which is common to men of letters, and consequently hesitated to confess frankly and openly the change which came in his opinions. Hence, he begins the *Social Contract* with the following famous lines: "Man is born free, and he is everywhere in chains. A man believes himself the master of others, but he is for all that more a slave than they."[1]

Here Rousseau is somewhat pessimistic, and the thought of a "Return to Nature," still lingers. There is, however, in this sentence a great deal of rhetoric, which lacks accuracy and, therefore, ought not to be used in scientific discussions. One is not justified in denouncing Rousseau's whole doctrine as expounded in the *Social Contract* simply from the few lines just quoted. "No great writer perhaps has suffered more than Rousseau from having his views judged by his weakest writings. The *Social Contract* is a book much more talked about than read."[2] If we would judge Rousseau rightly, we should free ourselves from his terminology and take the whole of the *Social Contract* into our careful consideration.

It is true that, even in the passage in which he recognizes clearly the superiority of the civil society to the natural, Rousseau still continues to express lamentations over the abuse of the new social conditions of the civil state, which, in his view, often degrade the individual; but this does not after all discredit his sound judgment.[3] Having witnessed the miserable degradation of France during the later decades of the seventeenth century, he could not altogether free himself from the influence of his environment. As Taine says,[4] France, after the debauchery of Louis XIV., was truly the nursery of the human

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[1] Rousseau, *The Social Contract*, bk. I., ch. I.
[2] Ritchie, *Natural Rights*, ch. III.
[3] Rousseau, *op. cit.*, bk. I., ch. VIII.
[4] Taine, *Ancient Regime*, bk. II., ch. V.

vices, of vanity and malice. Under such circumstances, it is but too natural that Rousseau deeply deplored the degradation which is possible in the civil state. Yet he fully admits that by adopting the civil organization man develops his faculties, expands his ideas, and ennobles his sentiments. Let us carefully read what he says: "Let us reduce all this account to terms which may be easily compared: What man loses by the social contract is his natural liberty and an unlimited right to anything that tempts him, which he can obtain; what he gains is civil liberty and the ownership of all that he possesses."[1]

From this passage it is clear that the French philosopher finally laid bare what he had in his mind. The famous phrase, "Man is born free, and he is everywhere in chains," is at bottom nothing but this, "Man loses in the civil state his natural liberty in order to gain civil liberty."[2] And the superiority of the civil liberty over the natural is clearly appreciated by Rousseau in another passage.[3]

Rousseau recognizes that true liberty is to be attained in the civil state only, that natural liberty is after all freedom by force and therefore not desirable, and that moral character which is the essence of humanity can be developed only by creating civil liberty. Natural liberty, he holds, makes man a slave morally, whereas civil liberty renders him master of himself. Thus we see how the Genevese thinker struggled to get off the slippery ground upon which he was treading when he wrote his early prize essays.[4] Aside from its terminology, the *Social Contract* was markedly free from the prejudices which predominated in Rousseau's mind in his earlier literary career. It must be admitted, therefore, that Rousseau does not preach the gospel of "Return to Nature," in the *Social Contract*.

Thus far I have endeavored to apologize for Rousseau. It

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[1] Rousseau, *op. cit.*, bk. I., ch. VIII.
[2] *Cf.* Bosanquet, *op. cit.*, ch. IV.
[3] *Cf.* Rousseau, *op. cit.*, bk. I., ch. VIII.
[4] *Cf.* Bosanquet, *op. cit.*, ch. IV.; and Ritchie, *op. cit.*, ch. III.

may be interesting to note that Rousseau's weak point as seen in his early writings was not noticed by the pioneers of Rousseauism in Japan. Consequently the *Social Contract* has not suffered in Japan from misunderstandings as it did in Europe.

§ 67. Let us now see what Rousseau has to say about freedom of humanity, for "the principles of freedom dawned on the world in Rousseau, and gave infinite strength to man, who thus apprehended himself as infinite. This furnishes the transition to the Kantian philosophy, which, from a theoretical point of view, took this principle as its basis. Knowledge was thus directed upon its own freedom, and upon a concrete content, which it possesses in its consciousness."[1] Kant, Fichte, and Hegel are disciples of the Genevese philosopher in a truer sense than those Jacobins, Robespierre and St. Just, with whom Rousseau has too frequently been judged.[2]

The part which Rousseau played in the Revolution was only in the direction of inspiring and ennobling French minds with the spirit of freedom. He says: "To renounce liberty is to renounce the quality of manhood, the rights of humanity, and even its duties."[3]

Again: "If we seek to find in what the greatest good of all consists—which should be the object of all systems of legislation—it will be found that it is reduced to two principal things: liberty and equality: liberty, because all individual dependence is so much force taken from the body of the state; equality, because liberty can not exist without it."[4]

It was such ideas of freedom which inspired the leaders of the Liberal Party of Japan, whose laborious propaganda kindled the fire of liberty in the minds of the island nation.

It is, moreover, an interesting fact that the most conspicuous

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[1] Bosanquet, *op. cit.*, ch. IX.
[2] Ritchie, *op. cit.*, ch. III.
[3] Rousseau, *op. cit.*, bk. I., ch. IV.
[4] Rousseau, *op. cit.*, bk. II., ch. XI.

defect in the *Social Contract* seems to have been unnoticed by the Japanese pioneers of Rousseauism. I refer to the fact that Rousseau failed to appreciate representative government as applied to large states. He says: "If there were a people of Gods, its government would be democratic. So perfect a government is not suitable for man."[1]

He fixes certain limits to the size of the state in which democracy may be resorted to without failure. This defect in the *Social Contract* may be ascribed to the circumstances of Rousseau's life. Born in Geneva, "a republic in many ways analogous to one of these ancient states, owing its political independence and its special character in a great degree to its Lycurgus, Calvin," and witnessing "the neighboring Swiss cantons, with which Geneva was allied, and which were direct democracies of the antique type, or else close oligarchies,"[2] Rousseau was naturally inclined to think that democracy is adaptable only to small states. Moreover, his favorite reading was in the Greek and Latin authors, whose political ideas were limited to those of small city-states. It is no wonder that he was an ardent admirer of Greek and Roman lawgivers such as Lycurgus, Solon, Numa, and Servius. Under such circumstances Rousseau hesitated to recommend representative government as adopted in England. But Japanese followers of Rousseau did not embarrass themselves with this weak point of the *Social Contract;* they proceeded straight towards the realization of representative government in Japan.

§ 68. Before passing to still another source of the political ideas of the Liberal Party, it may be worth while to discuss whether or not the *Social Contract* had any influence upon the framing of the Declaration of Rights of Man and of the Citizen. Against Paul Janet, a noted French jurist and the author of the *History of Political Science*, Professor Jellinek,

[1] Rousseau, *op. cit.*, bk. III., ch. IV.

[2] Ritchie, *op. cit.*, ch. III.

of Heidelberg, denies that the *Social Contract* had any place in the formation of the Declaration. He is positive that the principle as expounded in the *Social Contract* is against the idea of the rights of man as embodied in the Declaration.[1]

For my part, I hesitate to agree with Professor Jellinek, so long as there are no historical facts which positively show that the inaugurators of the French Revolution derived no inspiration from Rousseau. For it seems to me that the Genevese philosopher fully recognizes the right of liberty which man brings with him into society. He says: "This common liberty is a consequence of the nature of man."[2] Again: "If each man could alienate himself he could not alienate his children, they are born men and free; their liberty belongs to them, not one else has a right to dispose of it." Again: "To renounce liberty is to renounce the quality of manhood, the rights of humanity, and even its duties."[3] Are not similar expressions found in the Declaration of Rights? Is not the expression, "Men are born, and always continue, free and equal in respect of their rights," simply another expression of Rousseau's passage just quoted? The Heidelberg professor tells us that according to Rousseau "the individual does not retain one particle of his rights from the moment he enters the state."[4] But this, it seems to me, is a misrepresentation of what Rousseau says: "Each of us gives in common his person and all his force under the supreme direction of the general will; and we receive each member as an indivisible part of the whole."[5]

The transference to the community of all the individual's rights, according to Rousseau, simply signifies the transformation of natural rights into civil rights, so that the natural rights can be exercised fully and perfectly. He by no means

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[1] Jellinek, *Rights of Man and of Citizens*, ch. II.

[2] Rousseau, *op. cit.*, bk. I., ch. II.

[3] Rousseau, *op. cit.*, bk. I., ch. IV.

[4] Jellinek, *op. cit.*, ch. II.

[5] Rousseau, *op. cit.*, bk. I., ch. VI.

advocates the suppression or surrender of natural rights, but simply the transformation of them.

§ 69. It is true that Rousseau insists that everything the individual "receives of the nature of right he gets from the *volonte generale*, which is the sole judge of its own limits, and ought not to be, and cannot be, restricted by the law of any (other) power."[1] But this does not in the least impair the right of freedom which the individual possesses as a consequence of the nature of man. It is true that Rousseau ascribes absolute, sacred, and inviolable power to sovereignty. But what is sovereignty according to his conception? It is nothing but the general will of the people, or the *volonte generale*, to use Rousseau's expression. Rousseau draws a line between the *general will* which always represents the common interests of society, and the *will of all* which is the sum of individual desire that always tends towards selfishness. Thus, we see that Rousseau's conception of sovereignty, that is, of the general will, does not admit of the arbitrary exercise of power in the sacrifice of the general welfare of the right of liberty.

I do not, of course, mean to say that Rousseau's argument is altogether sound. I simply mean that his conception of absolute sovereignty is not detrimental to freedom Nor am I deceived by Rousseau's fallacies in regard to the conception of sovereignty. Indeed, Rousseau enthrones the general will over everything, and recognizes in it everything which is good and virtuous.

Is it possible, as Rousseau affirms,[2] that the general will of the people will never be corrupted? Is it possible that the people will never act unwisely? Rousseau himself admits that, although the people wish their own good, they do not always see it, and that the people are often deceived to the detriment of the general welfare. This manifest paradox

[1] Jellinek, *op. cit.*, ch. II.

[2] Rousseau, *op. cit.*. bk. I., ch. VII.

Rousseau struggled to harmonize, and says: "If the people being sufficiently informed, deliberates, and citizens have no communication with each other,—from a great number of small differences will result the general will, and the conclusion will always be good."[1]

From this and other passages it may be safely concluded that Rousseau calls the will of the people the general will, only so long as the people are thoroughly informed and deliberately consider the common good; in short, sound will is the general will. But such an arbitrary use of the term is hardly permissible. That the general will, which is the sovereignty, is inalienable, indivisible, and absolute, I do not deny; but that it is always right and always tends towards public utility, I can not admit. Such a seemingly paradoxical view of Rousseau might be excused, if we consider that his ideal state is a small city-state where each person can easily perceive what is common good and what is not. "It is necessary, then," our philosopher tells us, "in order to have an expression of the general will that there be no partial society in the state, and that each citizen vote only in accordance with his own views; such was the one, sublime establishment of the great Lycurgus."[2] Notice that he is always longing for the realization of the small city-state as was organized in ancient Greece. This explains many of his errors.

In Japan, Rousseau's conception of absolute sovereignty was no less emphasized than his teachings concerning the freedom of man. The Liberal Party advocates the absolute power of sovereignty. At this point the Party approaches the paternalistic school which, as I have said in a previous chapter,[3] allows the state an unlimited field of activity. Indeed, Rousseau's theory of sovereignty sounds in some respects like an anticipation of the new economic school which now predominates in Germany; because, without recognizing

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[1] Rousseau, *op. cit.*, bk. II., ch. III.

[2] Rousseau, *op. cit.*, bk. III., ch. III.

[3] *Cf. supra*, ch. IX.

the absolute power of sovereignty, the unlimited function of the state can not be admitted. Sovereignty, or the general will, is almost synonymous with the State itself; hence, from the absoluteness of sovereignty follows the unlimitedness of state-function. "Sovereignty implies the right to command and the power to enforce obedience. On its practical side it represents the power of the whole over every part of the state, over the individual with all his associations, institutions, and relations. The effect of political sovereignty would thus involve the aggregate of the forces of every kind that really coerce or persuade the people into obedience."[1] From which we can naturally conclude, like Professor Huxley, that no limit is, or can be theoretically set to state interference.[2] Although the Liberal Party of Japan advocated such a conception of absolute sovereignty, it derived another political idea from Spencer's ultra-individualism, which decidedly oppose the unrestrained function of the State. Thus the Liberals presented a remarkable inconsistency.

§ 70. Herbert Spencer does not at bottom renounce Utilitarianism or the theory of "the greatest happiness of the greatest number;" although he insists that the greatest happiness must be sought indirectly and not as an immediate aim. Why then did the Liberal Party follow Spencer's principle rather than Mill's *On Liberty?* In fact the Liberals had once been inspired by Mill, but afterward they found in Spencer a stronger inspiration. They thought Spencer's argument more logical, more thorough-going than Mill's. They would assert, with Herbert Spencer, that the immediate aim of man is the due exercise of all his faculties, and not happiness. Happiness, they say, is merely the result of the exercise of our faculties, provided, of course, such an exercise does not infringe upon the equal freedom of any other man. This conception of happiness sems to have been the chief

[1] McKechnie, *The State and the Individual*, pt. I., ch. IX.

[2] *Cf.* Huxley, *Administrative Nihilism.*

cause which made the Liberals change their attitude towards Mill.

Moreover, Spencer's Individualism, far more radical than Mill's view, was received with enthusiasm by the Liberals, who deemed governmental interference incompatible with individual freedom. "For Bentham," says Bosanquet, "all solid right is actually in the state, though conceived by himself as a means to individual ends; for Mill it is divided between the state and the individual, by a boundary which cannot be traced and therefore cannot be respected; for Herbert Spencer all right is in the individual, and the state has become little more than a record office of his contracts and consents."[1] In fact, Spencer hems the governmental activity into two narrow spheres: first, "to bind men into the social state, and secondly, to check all conduct endangering the existence of that state."[2] From which it follows that the state is merely the protector of public peace, the administrator of justice, the guardian of man's rights. The moment the state exceeds that duty, our English philosopher tells us, it ceases to be the protector of the people's rights, and changes to their aggressor. In his essays on *The New Toryism* and *The Coming Slavery*, Mr. Spencer assumes that an increase in the state interference means so much decrease in the freedom of the people, and then goes on to show that like the French Revolution which devoured its own children, the numerous socialistic changes made by act of Parliament, joined with numerous others presently to be made, will by and by give birth to an analogous catastrophe in the form of state-socialism, which is for him synonymous with slavery.[3] When all people were excited with the cry of liberty, when all the islands were agitated by incessant political movements, when the government, which did not allow the people any share in political rights, was

[1] Bosanquet, *op. cit.*, ch. V.

[2] Spencer, *Social Statics*, p. 127.

[3] Spencer, *The Man versus the State*, chs. I., II.; *Cf.* McKechinie, *The State and the Individual*, p. 161.

looked upon by the people with disgust and hatred—when Japan was in such a condition—it is quite natural that such an ultra-Individualism as Spencer's was enthusiastically welcomed by those who strove for the inauguration of a constitutional government.

Thus far I have tried to make clear how the American and French declarations of rights, Rousseau, Mill, and Spencer formed the political ideas of the Liberal Party. Of course they are not the sole sources of the political principles of the Liberals. There may indeed be many others besides them. Yet these were no doubt the most important sources. This is why I lay particular stress on them.

From what has been said, it can be seen that the general tendency of the Liberals was doctrinaire rather than practical, revolutionary rather than evolutionary. Indeed they were fond of discussing such abstract theories as the sovereignty of the people, the nature of sovereignty, the end of the state, etc. They troubled themselves more about speculative conceptions of popular rights than about practical grievances to be relieved. Hence their movements and actions were very radical and fearless, and they often made the government tremble with their threatening demonstrations. Naturally those characters who have sympathy for revolutionary actions gathered under the banner of the Liberal Party, although they did not necessarily agree with the political principles of the Party. When we come to the Progressive Party we find a markedly different type of character. This proves what I have said at the outset of the present chapter, viz., that the real bond of a political party is the consciousness of kind in its entirety, including sympathies, instincts, agreement in beliefs, and other forms of emotion and prejudice.

CHAPTER XII

SOURCES OF THE POLITICAL IDEAS OF THE PROGRESSIVE-CONSERVATIVE PARTY

§ 71. It has been shown in the preceding chapter that the tendency of the Liberals was revolutionary and that their thinking was abstract. When we come to the Progressive-Conservative Party we meet people whose nature is conspicuously different from that of the Liberals. The Progressives were more practical and more statesmanlike than the Liberals. The former admired such English statesmen as Burke, Palmerston, Disraeli, Cobden, Bright, and Gladstone while the latter glorified the figures in the revolutionary stages of France and England. Have the people the right of bringing on a revolution? What is the nature of sovereignty? Is it vested in the people or in the throne? How far is the government justified in interfering with individual freedom? Such were the problems which the Liberals warmly discussed. They defied class distinctions, no matter whether social or political; they proclaimed that absolutism should be overthrown by fire and blood if necessary; some of them even went so far as to assert that statesmen who believed in absolutism should be removed by assassination. They were full of vigor and spirit, but there were dangerous characters among them.

On the other hand, the Progressives belonged mostly to that middle class of society who were able to live a respectable life, and who were in certain respects more enlightened than the Liberals. What is the form of the government which is most efficient in promoting the welfare of the people? What securities against the government are needed by a nation? How far can the experience of one nation be applied with advantage to another? Such problems the Progressive-Conservative Party strove to answer not simply by speculation but by

the experience, the knowledge, and the wisdom of other thoughtful nations. They were no less earnest than the Liberals in establishing a constitutional government, but they were aware that revolutionary upheavals are contrary to the welfare of the community. Hence their movement was more thoughtful, their thinking more practical and in certain respects more conservative than that of the Liberals.

The Progressive-Conservative Party was inaugurated in 1881, a year later than the Liberal Party, with the following manifesto:

I. We aim to support and maintain the dignity of the Royal family and to promote the happiness of the people.

II. We believe that internal reformation must precede national expansion.

III. We aim at the establishment of local self-government, reducing central interferences as much as possible.

IV. We aim at the gradual extension of the right of suffrage as the condition of society progresses.

V. We aim at the promotion of commercial intercourse, avoiding political complications with foreign countries.

The above clearly indicates the *esprit de corps* of the Party, its practical tendency, its contrast to the Liberal Party. The proclamation contains no sort of abstract theory. It does not proclaim "all men are created equal," as did the proclamation of the Liberals. It recognizes the advisability of maintaining the dignity of the Royal family, whereas the liberals deliberately keep silent on this question. In short the Progressive-Conservative Party was thoroughly reformative, as over against the revolutionary character of the Liberal Party. I shall presently indicate what the sources of the political ideas of the Progressive-Conservative Party are.

§ 72. The preponderating ideas of the Party seem to have been Individualism and Utilitarianism as expounded by Ben-

tham and Mill. In this respect the Party followed the ideas of the liberal school of an early period. Again, the Party aimed mainly at the economic prosperity of the nation, which was the chief object of the economic school.

I have already touched utilitarianism in a previous chapter.[1] It remains for us to consider it more fully and to see whether or not it has been truly understood by the Progressives of Japan. It seems most probable that the inaugurators of Utilitarianism in Japan took the meaning of this great principle from Bentham's *Principles of Morals and Legislation*, and Mill's *Representative Government* and *On Liberty*. But in *Principles of Morals and Legislation* Utilitarianism is but crudely set forth, while in *Representative Government* and *On Liberty* it can be found incoherently discussed here and there. For the true significance of Utilitarianism we must turn to that other work of Mill's entitled *Utilitarianism*. It may not be superfluous to consider the real nature of Utilitarianism as conceived by Mill, in order that we may understand clearly whether this principle had a wholesome or unwholesome growth in Japan.

I have already suggested that Mill's Utilitarianism is not materialistic. Neither does it contain any baneful teachings. To the ordinary man this Greatest Happiness Principle has often seemed to mean something ignoble. In fact Mill suffered a great deal from such a misunderstanding. Even so great a thinker as Carlyle contemptuously impugns his moral philosophy as follows: "How can a man act heroically? The 'Doctrine of Motives' will teach him that it is, under more or less disguise, nothing but a wretched love of Pleasure, fear of Pain; that Hunger, of applause, of cash, of whatever victual it may be, is the ultimate fact of man's life. Atheism, in brief — which does indeed frightfully punish itself."[2]

Such a censure may have some truth as applied to Bentham's doctrine, which shows a tendency towards sense-

[1] *Cf. supra.*, ch. IX.

[2] Carlyle, *Heroes and Hero-Worship*, p. 173.

pleasure by reason of the importance it ascribes to material possessions, although he does not consciously identify happiness with sense-pleasure in the spirit of hedonism. In his view wealth is *par excellence* useful.[1] But by Mill the principle of Utilitarianism has been greatly improved, although he terms himself a disciple of Comte and of Bentham.

Mill emphasizes repeatedly the superiority of intellectual over material enjoyments. He thus deviates from Bentham's view which is inclined to regard all pleasures as equal. Besides, Mill's Utilitarianism is evidently altruistic. He endeavors to explain that all other moral symptoms—intuitive and theological—are unconsciously based upon the principle of utility, since all practical morality necessarily reduces itself at bottom to this principle, whether it has been admitted as a motive or not.[2] He says: "Meanwhile let utilitarians never cease to claim the morality of self-devotion as a possession which belongs by as good a right to them, as either to the Stoic or to the Transcedentalist. The Utilitarian morality does recognize in human beings the power of sacrificing their own greatest good for the good of others. It only refuses to admit that the sacrifice is itself a good. A sacrifice which does not increase, or tend to increase, the sum total of happiness, it considers as wasted. The only self-renunciation which it applauds, is devotion to the happiness, or to some of the means of happiness, of others; either of mankind collectively, or of individuals within the limits imposed by the collective interests of mankind." He continues: "I must again repeat, what the assailants of utilitarianism seldom have the justice to acknowledge, that the happiness which forms the utilitarian standard of what is right in conduct, is not the agent's own happiness, but that of all concerned. As between his own happiness and that of others, Utilitarianism requires him to be as strictly impartial as a disinterested and benevolent spectator. In the golden rule of Jesus of Nazareth, we read the com-

[1] *Cf.* Bentham, *Principles of Morals and Legislation*, chs. I–VI.

[2] *Cf.* Wundt, *Ethics*, Vol. II., chs. III–IV.

plete spirit of the ethics of utility. To do as one would be done by, and to love one's neighbour as oneself, constitute the ideal perfection of utilitarian morality."[1]

Utilitarianism, as above explained, seems to be strong enough to defend itself against any such denunciations as are sounded by Carlyle. What Mill emphasizes is not only the quantity of happiness but its quality as well. "Utilitarianism," he says in another connection, "could only attain its end by the general cultivation of nobleness of character, even if each individual were only benefitted by the nobleness of others, and his own, so far as happiness is concerned, were a sheer deduction from the benefit."[2] As to that hackneyed repudiation that the doctrine of utility is a godless doctrine, Mill replies: "If it be a true belief that God desires, above all things, the happiness of his creatures, and that this was his purpose in their creation, utility is not only not a godless doctrine, but more profoundly religious than any other."[2]

I do not share the psychological interpretation of the greatest-happiness theory as set forth in Mill's essay on *Analysis of the Phenomena of Human Mind*, in which he teaches that desire is solely another name for the idea of pleasure; in other words,the feeling of pleasure is the motive of action or the end of will. Aside from such a psychological discourse on the end of will, I feel that Mill's argument on utility as the highest good is not unsound.[3] Paulsen, a German philosopher, in his *System of Ethics*, opposing, on the one hand, the Utilitarian view, defines the highest good, on the other, as the perfect development and exercise of life.[4] But I fail to see that this defini-

[1] *Utilitarianism*, ch. II.

[2] *Ibid.*

[3] It is far from me, especially in such a short treatise as this, to defend such logically weak points of Utilitarianism as have been so vigorously contested by many profound scholars of Ethics like Green, Sidgwick, Mackenzie, and so on. My aim here is simply to show that Mill's doctrine of Utilitarianism is not of such a baneful character as has been supposed by many.—*Cf.* Green's *Prolegomena to Ethics*, Sidgwick's *Methods of Ethics*, Mackenzie's *Manual of Ethics* and *Introduction to Social Philosophy*.

[4] Paulsen, *A System of Ethics*, bk. II., ch. II.

tion is in conflict with Mill's view of utility. Utility as expounded by Mill seems to be quite consistent with, if it does not include, the energetic formulæ of Paulsen. It is not the aim of the present chapter, however, to enter into an exhaustive discussion of this question. I must pass on to a consideration of the influence of Utilitarianism upon Japanese minds.

§ 73. The utilitarian theory was the animating idea not only of the Progressive-Conservative Party but of a greater portion of the people during a certain period. We shall make a grave mistake, however, if we presume that the Greatest-Happiness Principle achieved a perfectly healthful growth in Japan. As it has been pointed out the principle was judged by the Japanese nation chiefly from *Representative Government* and *On Liberty*, in which Mill set forth his conception of Utilitarianism but imperfectly. Consequently, this principle has suffered a great deal from having been misconstrued by the island people. To be sure, there were many persons who truly understood the moral and political philosophy of Mill. But the rank and file of the Progressive-Conservative Party and the masses of the people could hardly have perceived that Utilitarianism comprehends so lofty and noble an idea as set forth in Mill's discourse on Utility.

In fact, the word "Utility," was a word much more talked about than studied. In it politicians found a weapon to attack the cabinet members on the ground not of a political principle but of personal interest; in other words, they insisted that it is against the principle of "the greatest happiness of the greatest number" to invest the same persons with political power for an indefinite period, checking the promotion of other persons, and that the ministers ought to withdraw from their positions to make room for politicians. In short these politicians used Utilitarianism as a means with which to accomplish their selfish purpose of office-hunting.

Still more numerous were the people who sneered at anything like philosophy because of their misconstrued Utilitarianism. Utilitarianism, they say, knows neither abstraction

nor speculation; we need not embarrass ourselves with theory or philosophy; we have simply to aim at the practical happiness or pleasure within our reach, and that is Utility. Let fools meditate upon philosophy, they say, our business is to seek after practical utility. To them Utilitarianism appeared to be something outside of philosophy, something which is not the product of profound meditation. Thus they deviated from what Mill so elaborately expounded and so laboriously defended against his assailants; and Utility suffered from having been changed to a baneful doctrine. And when this erroneous conception of Utility was joined with a misconstrued Individualism, its influence became still more harmful.

§ 74. Having already said much about Mill's Individualism as set forth in *On Liberty*,[1] it is needless to dwell upon it at length in this connection. I shall simply show that Individualism suffered from misunderstandings no less than its twin sister Utilitarianism. Like Utilitarianism, Individualism has been much more talked about than carefully considered.

Mill's maxims on liberty are, "first, that the individual is not accountable to society for his actions, in so far as these concern the interests of no person but himself;" secondly, "that for such actions as are prejudicial to the interests of others, the individual is accountable, and may be subjected either to social or to legal punishments, if society is of opinion that the one or the other is requisite for its protection."[2] From such a view Mill opposed Sabbath laws, laws for preventing intemperance, and laws against polygamy. He illustrates his point of view by the following example: "If a man through intemperance or extravagance becomes unable to pay his debts, or, having undertaken the moral responsibility of a family, becomes from the same cause incapable of supporting or educating them, he is deservedly reprobated and might be justly punished, but it is for the breach of duty to his family or creditors, not for the extravagance."

[1] *Cf. supra*, ch. IX.

[2] Mill, *On Liberty*, ch. V.

That such a vicious person might be justly punished by law, not for his extravagance, but for the breach of duty to his family or creditors, we will admit. But when we come to the question of moral or social reprobation, and not of legal punishment, we should be guarded to agree with Mill. Extravagance or debauchery is to be *ipso facto* reprobated, and not, as Mill asserts, simply for the breach of duty to his family or creditors; for frugality and decency are teleological necessities in the human life. Moreover, his opinion that man is responsible to society only for such actions as are prejudicial to the interests of others is not correct. It need hardly be explained that there are many cases in which our conduct is reprehensible although not intruding upon the interests of others. As a standard for legislation, Mill's maxims are not sound; as a test of right or wrong conduct, they are less sound.

I am aware that the English economist did not of course conceive of these maxims as a test of right or wrong, (for the test is Utility) but they are apt to be mistaken as such. Debauchery and extravagance may not be subjected to legal interference, but they should never escape moral censure. When Mill's influence in Japan was at its acme there were many people who mistook his view as set forth in *On Liberty* as the standard of moral conduct as well as a rule for governmental interference. This misconception intertwined with misconstrued Utilitarianism was very prejudicial to the morals of the Japanese people. Some lived in a very questionable manner, and would say: "I do not injure the interests of any others, my right of liberty justifies my conduct." Many behaved very disgracefully, saying: "I go my own way, nobody has a right to interfere with me." Indeed, Mill's Liberalism encountered more vicissitudes and endured greater sufferings than his Utilitarianism.

But this is simply the darker side of the influence. We should not ignore by far the most important part which Mill's principle of liberty played in Japan. What injury it inflicted upon the moral character of our nation has been made up for

by what it brought about in the way of political reformation. It was a strong weapon wielded against the absolute government. It was a powerful incentive which prompted the inauguration of a constitutional government. I do not share the view of the believers in Individualism with regard to the function of the state; I believe that the state is, or ought to be, the most highly-efficient machine for the carrying out of many great and noble schemes for the improvement of the people and for social amelioration. I shall not discuss this problem in detail here, because I have already said much about it in a previous chapter.[1]

As history has proved, the absorbing theme for the nation when it inaugurates popular government is the problem of State structure, rather than the question of State function. Until the problem of State structure is more or less satisfactorily solved, until a democratic government is firmly established, the problem of the State function can not receive distinctive enunciation.[2] This, it seems to me, is the chief reason why the question of State function came to claim our attention quite recently as compared to the problem of State structure. Individualism did good service in its day, and it has thus proved that it has a relative value when used for the redress of abuses. "Consciousness of this relative truth unfortunately blinds men to the fact that, now that the pernicious restraints on liberty have been removed, the same principles that did good before may now do evil, if treated as an absolute and final truth and used to break up the wholesome restraints of society. Reformers must build up as well as pull down, turning their attention to the integration of the whole as well as to the enfranchisement of the parts."[3]

§ 75. The Progressive-Conservative Party has as one of its aims the establishment of a local self-government, and the

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[1] *Cf. supra*, ch. IX.

[2] Donisthorpe, *Individualism*, ch. III.

[3] McKechnie, *The State and the Individual*, p. 72.

reduction of central interference in local affairs. By the time the Liberal and the Progressive-Conservative Parties were established Francis Lieber's *Civil Liberty and Self-Government* had been translated and seems to have been highly appreciated by both parties. But the doctrinaire Liberals were embarrassing themselves too much with speculative problems to consider thoroughly such a practical question as local self-government. Hence this principle found its expression not in the manifesto of the Liberal Party but in that of the Progressive-Conservative Party.

A pervading system of local self-government is of great importance as a guarantee of individual liberty. Democracy can not grow fully where local administration entirely depends upon the interference of the central government. "Individual liberty consists, in a great measure, in politically acknowledged self-reliance, and self-government is the sanction of self-reliance and self-determination in the various minor and larger circles in which government acts and of which it consists. Without local self-government, in other words, self-government consistently carried out and applied to the realities of life, and not remaining a mere general theory, there is no real self-government according to Anglican views and feelings. Self-government is founded on the willingness of the people to take care of their own affairs, and the absence of that disposition which looks to the general government for everything; as well as on the willingness in each to let others take care of their own affairs. It can not exist where the general principle of interference prevails, that is, the general disposition in the executive and administration to do all it possibly can do, and to substitute its action for individual or minor activity and for self-reliance. Self-government is the corollary of liberty."[1]

Indeed, local self-government is a keynote of democratic government. As the late Professor Gneist points out in his *Administrative Reformation*, the reason why the imitations in

[1] Lieber, *Civil Liberty*, ch. XXI.

continental Europe of the English parliamentary system had in most cases been unsuccessful may well be ascribed to the fact that the institutions which stood at the top of the British form of government had alone been copied without at the same time adopting those which lay at the base of the structure. Fortunately Japan had been fully acquainted with this fact and established an organization of local self-government two years before the present constitution came into force.

Nor was this the first experience of local self-government in Japan. Ten years before the new system of local government was inaugurated Japan had already had local assemblies whose function it was to deliberate over the interest of their respective localities. These local assemblies had not only been good training schools for popular government, but also proved reasonably successful. Hence the new legislation on the local organization promulgated in 1888 was nothing but the reformation of the older institution.[1] Although our present system of local government was modeled upon the Prussian system, and consequently has a grave defect in that it gives the preponderating influence to the rich,[2] it has, no doubt, furnished our constitutional government with a powerful auxiliary.

§ 76. It has already been shown that the ideal of the Progressive-Conservative Party was to realize a parliamentary system of government as in England. As it has been generally recognized, in England sovereignty rests with the King or Queen in Parliament.[3] The Monarch alone has no sovereign power, neither has the Parliament. Sovereignty in reality is vested in the combined body of the Monarch and Parliament. As Professor Hearn rightly puts it, the dis-

[1] *Cf.* Iyenaga, *The Constitutional Growth of Japan*, p. 47.

[2] Lowell, *Governments and Parties*, Vol. I., ch. VI; *Cf.* Shaw, *Municipal Government in Continental Europe*, pp. 307–8. For a criticism of the working local self-government of Japan, see Ernest W. Clement's *Local Self-Government in Japan*, Political Science Quarterly, vol. VII, pp. 294–306.

[3] Dicey, *The Law of the Constitution*, pt. I., ch. I.

tinctive characteristic of absolutism is the unity of its power, and not the individuality of the person in whom that power is vested. A government in which power is vested in a single body is absolute, whether it be imperatorial or democratic, whether it derives its origin from the sword or the ballot box, or whether it be exercised by one person or by many millions. "The enormous power of Parliament," says Professor Hearn, "and more especially of the representative portion of it, its legislative power, its direction, through ministers who are responsible to it, of all the powers of the Crown, its supervision of the Bench, the absolute control of the House of Commons over the finances of the kingdom, at first sight suggest a unity of power that the most centralizing Gaul could not contemn. But there is in reality no such unity. Power is diffused through different bodies of which the unanimous concurrence is required; and it is exercised by each of them under powerful checks. These checks relate partly to the regulation by the sovereign body of its own proceedings, and partly to the external influences to which these proceedings are subjected."[1] Further discussion of the English form of government would be to wander from the present subject. Suffice it to say, therefore, that the ideal government of the Progressive-Conservative Party was one in which sovereignty rests neither with the Emperor nor with the Parliament, but with both equally. The ideal can hardly be said to have been realized, as the constitution of Japan is copied from that of Prussia, where political theory appears to have been charmed by absolutism.

§ 77. As has been indicated in the previous chapter, the animating spirit of the Liberal Party was absolute equality, which admits of no class distinction, either social or political. Hence they did not believe in the bicameral system of legislature. The unicameral system was the legislative body which most of the Liberals aspired to. Over against this opinion of

[1] Hearn, *The Government of England*, ch. XIX.

the Liberals, the Progressive-Conservative Party insisted that the bicameral system, by dividing a power that would otherwise be beyond control, secures an essential guarantee for freedom.

It is interesting to note how far reaching the influence of racial instinct is. The turn of mind of those who are influenced by the Latin race is essentially Latin, and that of those influenced by the Anglican race is conspicuously Anglican. Such different effects of racial influence are perceived even in the Insular Empire of the Far East. As Francis Lieber points out, the bicameral legislature has been an inseparable feature of the Anglican race.[1] The Liberal Party of Japan, which derived inspiration from France, was naturally at variance, in regard to the conception of legislative organization, with the Progressive-Conservative Party, the political ideas of which were essentially English.

It may be well said that modern political theory and the experiences of various nations have affirmed the merit of the bicameral system of legislature. The motive of those nations in adopting the bicameral system was not necessarily in accord with its theoretical value. At first this system was adopted, undoubtedly, to reconcile the diverse and conflicting

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[1] Lieber, *Civil Liberty*, ch. XVII.

Professor Hearn says: "Not only do the Peers of the present day securely fill the places of the Mowbrays and the Bohuns, the Mortimers and the De-Veres, but in every community to which our mighty mother of men has given birth the institution of the two chambers is religiously preserved. When the backwoodsmen of Oregon met to repair the continued neglect of Congress, and to establish some form of Government for themselves, they at once adopted the principles of the two Houses. Even the freed Africans brought the same principle to Liberia. In the Congress of the United States, in the Congress, while it lasted, of the Confederate States, in every State Legislature, North or South, on the Atlantic or in the far West, in every British colony which has attained to the dignity of local self-government from the St. Lawrence to the Murry, the same political organs are reproduced. The true cause of this remarkable uniformity lies deep in the original character of Anglican liberty. The liberty is essentially different from that 'unity of power' to which Rome and the nations derived from Rome aspire."—Hearn, *op. cit.*, ch. XIX.

interests of peers and commons, of Imperialists and Democrats. Nowadays in most of the constitutional states the *raison d'être* which primarily necessitated the adoption of the bicameral legislative system seems to be gradually disappearing; but the necessity of preserving this system has been proved by other reasons. Such reasons are:—first, "a single body of men is always in danger of adopting hasty and one-sided views, of accepting facts upon insufficient tests, of being satisfied with incomplete generalization, and of mistaking happy phrases for sound principles;" secondly, "there is a sort of natural and healthy rivalry between the two bodies, which causes each to subject the measures proceeding from the other to a careful scrutiny and a destructive criticism, even though the same party may be in majority in both;" thirdly and lastly, "two chambers are necessary to preserve the balance of power between the legislative and executive departments," as "the single-chamber legislature tends to subject the executive to its will."[1] As the culture and character of the legislative members and of electors are elevated to a point where the legislators do not err in their deliberation nor the electors choose worthless representatives, the above reasons will gradually lose their force. They will, however, persist until the culture and character of legislators and of the people in general are so elevated as to make it a matter of no concern whether the legislature be composed of one chamber or of a half-dozen.

We do not hesitate to endorse the wisdom which the Progressive-Conservative Party showed in insisting upon the necessity of a bicameral legislature, and to disapprove of the illadvised radicalism of the Liberal Party. But the organization of the Upper House as constituted by the organic law of Japan is not altogether satisfactory to the Progressives and admits of further modification. We shall not enter into the discussion of this problem for the present, for it will come up more properly in another connection.[2]

[1] Burgess, *Political Science*, Vol. II., pp. 106–108; *cf.* Lecky, *Democracy and Liberty*, ch. IV.

[2] *Cf. infra*, ch. XVI.

CHAPTER XIII

POLITICAL IDEAS OF THE CONSTITUTIONAL-IMPERIAL PARTY

§ 78. The Constitutional-Imperial Party appeared in the early spring of 1881, the year in which the Progressive-Conservative Party was inaugurated. Its initial proclamation reads as follows:

I. We shall not ask any alteration in the date of the inauguration of a constitutional government which is settled for the year 1890 by the Imperial Rescript of 1880.

II. We shall abide by the said Rescript which declares that a constitution shall be granted by the Emperor, and we shall not claim any share in framing the constitution.

III. We believe in the sovereignty of the Emperor, the wielding of which will be regulated in the constitution.

IV. We believe in the bicameral system of legislative organization.

V. We believe in the absolute veto power of the Emperor.

VI. We insist that military officers shall not interfere with political affairs.

VII. We recognize the necessity of promoting the independence of the judicial power in proportion to the perfection of the institutions and laws necessary for the said independence.

VIII. We insist that the liberty of speech, writing, publication, public meetings, and associations shall be allowed within the limits of the law and without prejudice to peace and order.

It need hardly be explained that this Party was organized to support the cause of the government against the two Parties we have just noted. The real leader of the Party was Count Ito (now Marquis Ito), then an influential member of the Cabinet, although he did not openly profess to be its leader. It has been said that the above platform was drafted under the direction of Count Ito.

Like the English Royalists under the leadership of Lord Clarendon in the period of the Convention Parliament and the Cavalier Parliament, the Constitutional-Imperial Party of Japan undoubtedly advocated the divine right of the King, and endeavored to weaken, and if possible to checkmate, the democratic movement. Lord Clarendon, one day in the Parliament, declared: "It is the privilege, if you please, the prerogative—and it is a great one—of the common people of England to be represented by the greatest and learnedest, the wealthiest and wisest, persons that can be chosen out of the nation, and the confounding the Commons of England with the common people of England was the first ingredient in that accursed dose which intoxicated the brains of men with the imagination of a Commonwealth, a government as impossible for the spirit, temper, and genius of the English nation to submit to as it is to persuade men to give their cattle and their corn to other men and to live upon roots and herbs themselves. That monster, Commonwealth, cost this nation more in her few years, than the monarchy in six hundred years."[1]

The two ministers, Lord Clarendon and Count Ito, have similar instincts in one respect, namely, they were both the advocates of the divine right of the King. They both believe in a constitutional government, but at the same time insist that the constitution is simply a manifestation of absolute sovereignty which is the King.

Guizot, in his *History of Civilization*, names the English Royalists the legal party and judiciously criticises it. We can

[1] G. B. Smith, *History of the English Parliament*, Vol. I., pp. 502-516.

not refrain from quoting the criticism at length, as it sounds very much like the criticisms of the Constitutional-Imperial Party of Japan. The following is the passage:

"This party highly blamed and earnestly desired to put a stop.....to all acts, indeed, contrary to the known law and usages of the country. But under these ideas, there lay hid, as it were, a belief in the divine right of the King, and in his absolute power. A secret instinct seemed to warn it that there was something false and dangerous in this notion; and on this account it appeared always desirous to avoid the subject. Forced, however, at last to speak out it acknowledged the divine right of kings, and admitted that they possessed a power superior to all human origin, to all human control; and as such they defended it in time of need. Still, however, they believed that this sovereignty, though absolute in principle, was bound to exercise its authority according to certain rules and forms; that it could not go beyond certain limits....."[1]

We feel that we can hardly add anything to this passage in criticising our Constitutional-Imperial Party, except that the Party was bolder than the English Royalists in that it did not hesitate to declare the divine right of the Emperor. It magnified the splendor of the unique throne transmitted through an unbroken line of one and the same dynasty; it asserted that the Emperor is heaven-descended, divine, and sacred, and is preëminent above all his subjects; it insisted that "all the different legislative, as well as executive, powers of State, by means of which the Emperor reigns over the country and governs the people, are united in this most exalted Personage, who thus holds in His hands, as it were, all the ramifying threads of the political life of the country, just as the brain, in the human body, is the primitive source of all mental activity manifested through the four limbs and the different parts of the body."[2]

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[1] Guizot, *History of Civilization*, Lect. XIII.

[2] Ito, *Commentaries on Japanese Constitution*, p. 7.

§ 79. The promoters and leading members of the party were not ignorant of western political theories, but its rank and file were chiefly composed of those who were disciplined by Confucian and Shinto doctrines, and who maintained old-fashioned Mikadoism. The Constitutional-Imperial Party resembles the paternalistic school of an earlier period in that it recognizes the absolute power of sovereignty; but it deviates from the latter in that it locates the sacred sovereignty in the person of the Emperor. The paternalistic school was far from advocating the sovereignty, not to say the divine right, of the Emperor.[1] In certain respects, the Constitutional-Imperial Party may be regarded as a reaction against radical democracy as propagated by the Liberals.

To conceal their manifestly conservative ideas under the cloak of occidental political ideas, the leaders of the party appealed to the political theory prevailing among German jurists. Nowadays many German jurists "identify sovereignty with force, and ascribe it to the monarch, considering the houses which share the legislative power with him not as assemblies to which the people have granted the task of controlling the government, but as councils which the prince has deemed wise to join to himself to aid him in the exercise of his prerogative."[2] Such was the theoretical ground, to which the Imperialists appealed whenever their notion in regard to the divine right of the King seemed to be attacked.

The Party was not as influential among the people in general as were the other two Parties; but it was more influential among the nobles, in the court, and in official circles, because its platform was aristocratic and Imperialistic, and consequently in harmony with their interests. Its real leader, Count Ito, was an actual leader of the then existing ministry. Hence the constitution of Japan was drafted in accordance with the ideals of the Constitutional-Imperial Party, to the dissatisfaction of the Liberal and the Progressive-Conservative Parties.

[1] *Cf. supra*, ch. IX.

[2] Borgeaud, *Adoption and Amendment of Constitutions*, pt. II., bk. I., ch. I.

CHAPTER XIV

THE INAUGURATION OF THE CONSTITUTION OF JAPAN

§ 80. We have seen that the Emperor promised to grant a constitution not later than 1890. It is now important to note by whom the constitution was drafted, because the characteristics and policy of the framers are unmistakably stamped upon it. Why does the constitution of Japan savor so much of German absolutism in spite of the fact that the Liberal Party and the Progressive Party were inspired by French, American, and English political ideas? Why does the principle of the divine right of the Emperor, which seemed to have given way before the increasing influence of democratic ideas, still find expression in the constitution of Japan? These questions we shall presently answer.

Soon after the Imperial Rescript promising the inauguration of a constitutional government was promulgated, Marquis Ito was appointed the framer of the constitution by the Emperor. Meanwhile, there was a warm discussion among the people and among the political parties as to the manner in which the constitution should be drafted. The Imperial Rescript unmistakably says that a constitution shall be granted by virtue of the Emperor's sovereignty. The Constitutional-Imperial Party zealously defended the cause of the Emperor, proclaiming in its platform, that "we shall not claim any share in framing the constitution." But the Liberals were not satisfied with this method of constitution-making, being conscious of the possible danger to freedom of entrusting an arbitrary government with the authority of drafting a constitution. Sovereignty, they contended, resides in the people; therefore a constitution should be framed by the representatives elected by the people. Not a few insisted that the constitution should be submitted to the people for ratification, although it might well be

drafted by the committee nominated by the sovereign. Even the less radical Progressive-Conservative Party insisted upon the necessity of convoking a constitutional convention consisting of members chosen by the people. But the government was not embarrassed by the hue and cry of the press, and the demonstrations and protests of the Parties and of the people. It went its own way with Marquis Ito as its leader.

When Marquis Ito was ordered by the Emperor to frame a constitution, he started for the West with the purpose of investigating the actual working of constitutional governments as well as the content of the constitutional laws of the various countries. It need hardly be said that neither in America nor in France, where sovereignty emanates from, and resides in, the people, could this statesman, who believes, or professes to believe, in the divine right of the King, find a satisfactory constitution. Even the constitution of England, the spirit of which in many respects seems to furnish a model adaptable to the conditions of Japan, did not satisfy Ito. For in England sovereignty does not reside in the King alone. There too, the ministry is responsible to the parliament. Proceeding to Prussia he at last found a form of government almost identical with his ideals. And, moreover, he met there a great proud man, whose iron hand had ruled Germany for many years, whose services had in many respects been unparalleled in the history of statesmen, and whose commanding and majestic presence made men stand in awe of him. I refer to Prince Bismarck.

Ito learned of Bismarck how it is possible to maintain a constitutional government without at the same time making the cabinet responsible to the parliament. As is well known, in Prussia the parliamentary system does not exist. The ministers are responsible solely to the throne. "They are the servants, not of the chambers, but of the crown, a fact that finds its outward expression in the frequency with which they refer to the personal opinions of the King."[1] Such a

[1] Lowell, *Governments and Parties*, Vol. I., p. 289.

system of government was exactly what Ito desired to have realized in Japan. There is no difficulty, Ito was told by Bismarck, in keeping the ministry above the influence of a clamorous parliament. Although conscientious in the discharge of his duties as he understood them, in the fear of God, although he found that the sanctum of a one-man power was not a bed of roses, Bismarck was so iron-handed, so haughty, and so irritable, that he preferred to stand alone rather than to be hampered by associates. In organizing the German confederation he planned the federal ministry so as to entrust all power to the Chancellor, who has subordinates, but no colleagues. It was in this way that Bismarck made himself the virtual dictator of his country.[1] All this was precisely what Marquis Ito aspired to.

§ 81. Thoroughly inspired by Bismarck, Marquis Ito returned to Japan in the fall of 1883, after an absence of nearly a year. He at once undertook to reorganize the government and to introduce into society aristocratic elements which were intended to counteract the influences of democracy.

First of all, he inaugurated a new system of class distinctions dividing the nobility, for the first time in the history of Japan, into five grades, namely, Prince, Marquis, Count, Viscount, and Baron. Prior to this time, Japan had never witnessed such a thoroughgoing system of class distinctions, the noble class having been known simply as the nobility without gradations. The policy of Ito in establishing the new system was to secure the good will of the opposition politicians by giving them the honors of nobility which yielded greater or lesser pecuniary advantage according to the grade. The new class distinctions do not of course create any political privileges for the benefit of the nobility, the distinctions being simply social as in England or Prussia. At first thought, therefore, this system seems to be of no harm to the community. A second thought, however, reveals the truth that such an aris-

[1] Lowell, *Governments and Parties*, Vol. I., p. 277.

tocratic regime is a great impediment not only to the growth of democratic ideas but also to the elevation of a national character. For there is a vast deal of truth in Lord Brougham's words in which he affirms that "sobriety, integrity. love of the public good, and disinterestedness, virtues foreign to a court, spring up naturally on a democratic soil."[1] Thus Ito's policy has been of some avail in blunting the democratic feeling of our nation.

His next business was to reorganize the ministry according to the plan he had learned in Europe. As we have already noted in a previous chapter,[2] the executive body of Japan had been of a peculiar nature, there having existed no Cabinet in the sense in which the word is used today. By the reorganization planned by Ito, the Ministers of State were made each separately to bear his share of responsibility to the Emperor directly. The Ministers, ten in all, compose the Cabinet, of which the Prime Minister is the President.[3] The object of this change, as Ito says, was, on the one hand, to give weight to the functions of the Ministers of State and to impress upon them a higher sense of responsibility, and, on the other, to maintain the unity of the Cabinet and to avoid all complications and variances therein. Besides the ten Ministers there is another official, namely, the Minister of the Imperial Household, who is placed outside of political complications, and consequently not admitted into the Cabinet. This reformation is surely in the direction of Cabinet organization, and the credit therefor belongs to Ito.

In the meantime Marquis Ito was engaged in drafting a constitution. The staff by which he was assisted consisted of native scholars of political science and jurisprudence who had

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[1] Proal, *Political Crime*, ch. VII.

[2] *Cf. supra*, ch. VIII.

[3] The ten ministers are: (1) the Prime Minister, (2) the Minister for Foreign Affairs, (3) the Minister for Home Affairs, (4) the Minister for Finance, (5) the Minister for Army, (6) the Minister for the Navy, (7) the Minister for Justice, (8) the Minister for Education, (9) the Minister for Agriculture and Commerce, and (10) the Minister for Communications.

a thorough knowledge of the constitutions of Western countries, but who shared, or at least professed to share, the view of the Marquis as to the fundamental principles of the state. Plainly, they were simply tools with which Ito codified his political principles. Their service was therefore merely that of draftsmanship.

§ 82. And so the ten years prescribed by the Emperor as the preparatory period for a constitutional government had elapsed, and the constitution framed by Marquis Ito was promulgated. It was on the eleventh day of January, 1889, that the Emperor surrounded by the high officials, ministers and ambassadors of foreign countries, and the Presidents of local assemblies, solemnly spoke as follows: "Whereas We make it the joy and glory of Our heart to behold the prosperity of Our country, and the welfare of Our subjects, We do hereby, in virtue of the supreme power, inherited from Our Imperial Ancestors, promulgate the present immutable fundamental law, for the sake of Our present subjects and their descendants.

"The Imperial Founder of Our House and Our other Imperial Ancestors, by the help and support of the forefathers of Our subjects, laid the foundation of Our Empire upon a basis, which is to last forever. That this brilliant achievement embellished the annals of Our country, is due to the glorious virtues of Our Sacred Imperial Ancestors, and to the loyalty and bravery of Our subjects, their love of their country and their public spirit. Considering that Our subjects are the descendants of the loyal and good subjects of Our Imperial Ancestors, We doubt not but that Our subjects will be guided by Our views, and will sympathize with all Our endeavors, and that, harmoniously coöperating together, they will share with us Our hope of making manifest the glory of Our country, both at home and abroad, and of securing forever the stability of the work bequeathed to Us by Our Imperial Ancestors."[1]

[1] The translation is borrowed from Marquis Ito's *Commentaries*.

Then the Emperor proceeded to the sanctuary of the palace and there took an Oath saying:

"We, the successor to the prosperous Throne of Our Predecessors, do humbly and solemnly swear to the Imperial Founder of Our House and to Our other Imperial Ancestors that, in pursuance of a great policy coëxtensive with the Heavens and with the Earth, We shall maintain and secure from decline the ancient form of government.

"In consideration of the progressive tendency of the course of human affairs and in parallel with the advance of civilization, we deem it expedient, in order to give clearness and distinctness to the instructions bequeathed by the Imperial Founder of Our House and by Our other Imperial Ancestors, to establish fundamental laws formulated into express provision of law, so that, on the one hand, Our Imperial posterity may possess an express guide for the course they are to follow, and that, on the other, Our subjects shall thereby be enabled to enjoy a wider range of action in giving Us their support, and that the observance of Our laws shall continue to the remotest ages of time. We will thereby be able to give greater firmness to the stability of Our country and to promote the welfare of all the people within the boundaries of Our dominions; and We now establish the Imperial House Law and the Constitution. These Laws come to only an exposition of grand precepts for the conduct of the government, bequeathed by the Imperial Founder of Our House and Our other Imperial Ancestors. That We have been so fortunate in Our reign, in keeping with the tendency of the time, as to accomplish this work, We owe to the glorious Spirits of the Imperial Founder of Our House and of Our other Imperial Ancestors.

"We now reverently make Our prayer to Them and to our Illustrious Father, and implore the help of Their Sacred Spirits, and make to Them solemn oath never at this nor in the future to fail to be an example to Our subjects in the observance of the Laws hereby established.

"May the Heavenly Spirits witness this Our Solemn Oath."[1]

We are bound not to criticise this address and this oath out of respect for His Majesty the Emperor. Foreigners, however, will easily perceive that throughout all the address and the oath runs the spirit of Shintoism, which is, as we have elsewhere pointed out, nothing but the embodiment of Mikadoism. They will not fail to see that while Shintoism has almost disappeared from among the people, it still exists in the Imperial Court, and makes the Royal family aware that their ancestors are of heavenly descent. They will be astonished to find in Marquis Ito's *Commentaries on Japanese Constitution* such a passage as the following: "The Sacred Throne was established at the time when the heavens and the earth became separated. The Emperor is Heaven-descended, divine and sacred; He is preëminent above all his subjects. He must be reverenced and is inviolable. He has indeed to pay due respect to the law, but the law has no power to hold him accountable to it. Not only shall there be no irreverence for the Emperor's person, but also shall He not be made a topic of derogatory comment nor one of discussion."[2] Today, when all sorts of superstition are being undermined by the power of science, when the idea of the sacred descent and divine right of the King has become obsolete in almost all civilized countries, is it not indeed strange that expressions like this are unhesitatingly pronounced by such an enlightened statesman as Marquis Ito?

He probably hopes to maintain and foster the loyal spirit of the people by preserving the idea of the divine descent of the Emperor. If so he will surely be deceived. The *zeitgeist* of present Japan is absolutely against such an idea as this. It is truly lamentable if the Japanese nation's respect for the Emperor is such as will fall with the disappearance of the old ideas regarding the origin of the sovereign. No, it is not the

[1] The translation is borrowed from Ito's *Commentaries*.

[2] *Commentaries on Japanese Constitution*, p. 6.

theory of the divine origin of our Emperor that at present moves the Japanese nation into patriotic actions and instills the loyal spirit into its heart. It is the history of Japan. It is the principle of our government. It is the love and mercifulness shown by many Emperors towards the people. The loyal spirit of the Japanese people will, therefore, outlive the superstitious notion of the sacredness of the throne. On the other hand such expressions as those of Marquis Ito will end by undermining the loyalty of the people which he desires to preserve.

§ 83. We have seen that Marquis Ito played the part of a law-giver—of a Moses, a Solon, a Lycurgus, as foreign journals ignorantly say. As Dr. Godkin says in his *Unforeseen Tendencies of Democracy*, "we can hardly conceive of a state of mind in which we should be willing to leave to one man, however revered, the construction of a plan of life both civil and political."[1] But such was, in certain respects, the case in Japan.

I do not, however, mean to say that the constitution of Japan was drafted in an altogether arbitrary manner to satisfy the personal will of the Emperor. Although it was framed by a believer in the divine right of the King, it is none the less the outcome of popular agitation, and the aspiration of the people is unmistakably stamped upon it. As I have often pointed out, it was not the gift of the Emperor pure and simple, but it was exacted from him. The Japanese nation had already learned how to wield public opinion against the arbitrary government before the constitutional government was inaugurated.

The period of the struggle for liberty, of national commotion, and of revolutionary agitation, ended with the promulgation of the constitution, which went into effect in 1890; and the nation entered upon the era of practical experience in democratic government. And Japan is, as an eminent native

[1] *Unforeseen Tendencies of Democracy*, p. 11.

writer prophesies, "now about to accomplish in a few decades what has taken Europe centuries to effect. England, having passed through the House of Lords period towards the end of the eighteenth century, is now in a transition stage from the House of Commons period to that of the press. Japan with a parliamentary experience of less than ten years, is already giving infallible signs of the same tendency."[1]

The inauguration of the constitution is a milestone on the path of the political development of Japan. Previous to that day the thoughts of the people were centered in the realization of a constitutional government, and the political ideas of political parties were essentially doctrinaire. With the promulgation of the constitution, however, a greater portion of the programmes of the respective political parties became practically unnecessary, and men's minds began to turn chiefly towards the execution of practical policies aimed at the redress of grievances, and the promotion of the national welfare.[2]

In the meantime western literatures on politics — German, French, English, American, and Italian—were incessantly

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[1] Bushby, *Parliamentary Government in Japan*, in the Nineteenth Century Review, July, 1899; *Cf.* Curzon, *Problems of the Far East*, ch. III.

[2] Since the promulgation of the constitution the political parties of Japan have undergone many changes and vicissitudes both in form and principle. The Liberty Party, now known as the *Seiyu-Kai*, is no longer the enthusiastic, hot-blooded, doctrinaire party of the earlier days. From the supposed necessity for the purpose of political campaign, it entered recently, probably unwisely, into the tenet of Marquis Ito, and received this aristocratic statesman, who is even now decidedly opposed to liberalism, as the actual leader of the Party. The Constitutional-Imperial Party, of which Ito was the real leader, dissolved itself with the inauguration of the constitution. The Imperial Party of today can hardly be regarded as the successor to the dissolved Party. Of the three Parties which we have discussed in the preceding three chapters the Progressive-Conservative Party is that which comparatively preserved its integrity and adhered to its original organization. All these can not be explained in detail in a small volume like this. Besides, the present volume is not intended to be a political history. Changes and counter-changes in the policies of political parties which are nothing but political tactics have no concern with a discussion which aims to deal with the development of the fundamental political ideas of a nation.

and abundantly pouring into Japan. Rousseau, Montesquieu, Bluntchli, Mill, Spencer, and the like, were no longer unfamiliar to the Japanese. The famous works of all the prominent writers of the West were read by scholars who in turn imparted their knowledge to the people at large both by means of pen and tongue. Men's minds became broadened. The nation's aspiration became higher. And "the 'child of the world's old age' has proved to be its most remarkable offspring."[1]

[1] Henry Norman, *Peoples and Politics of the Far East*, p. 375.

CHAPTER XV

THE CAUSES OF THE PEACEFUL ADOPTION OF THE CONSTITUTION IN JAPAN

§ 84. Before discussing the political ideas embodied in the constitution of Japan, it may be worth while to investigate the causes which enabled the insular nation to adopt its constitution without a revolutionary upheaval. Foreigners may, and sometimes really do, wonder why the Japanese nation was able to avert violence, in spite of a manifest tendency which at one time threatened to cast the whole islands into the convulsions of a revolution. The Emperor had promised to grant a constitution, but the nation had to wait ten long years for its fulfillment; and what is of still more importance, that constitution was to be drafted by a statesman who believes in the divine right of the sovereign. Under such circumstances, how was it possible that the destruction of a Bastile or the pillage of a Versailles did not give the signal for revolution? The absence of such revolutionary actions may be accounted for as follows.

§ 85. First, an extraordinary spirit of loyalty modified the revolutionary movement. As soon as the Imperial Rescript, promising the granting of a constitution, was promulgated the political agitation which had been paramount began to subside. In France or Prussia such a promise could hardly have quieted the popular turmoil. But in Japan where there seems to exist a sort of unseen bond which unites the people to the Emperor, the case was very different. Indeed, this phenomenon of loyalty to the Emperor is a peculiar characteristic of the Japanese nation. The advantages and disadvantages of such a passionate loyalty have been discussed in foregoing chapters. In this particular case, however, one is bound to

approve the wisdom of the people who quietly waited ten years instead of furthering the revolutionary movement. If they had been impatient, the only alternative would have been a terrible revolution—a disaster to the whole nation.

With Francis Lieber, I feel "that English liberty had been under a remarkable guidance of the divine Ruler of men; that justice, order, stability, freedom, had been reconciled in it in a wonderful way; that its capacity of progress without revolution set it up as a model and a guide to the nation."[1] May the loyal spirit of the Japanese nation combined with the Emperor's love of people, accomplish the same development as that of England, and restrain the impulsive nature which I have mentioned from time to time and which has frequently been likened to the fickleness of the French nation! May the Emperor of Japan ever extend and guarantee the liberty of the people, to the end that justice, order, stability, and freedom shall be reconciled in the throne!

§ 86. Secondly, the masses of Japan were not arbitrarily ruled and taxed as in France before the Revolution;[2] there were no privileged classes exempt from taxation and conscription, and living by the sweat of others. Had Japan's economic condition been similar to that of France in the latter decades of the eighteenth century, there would have been no alternative except disastrous revolution. In France prior to the Revolution, the king and the privileged classes indulged "in fashion, in the talent for self-display and in entertaining, in the gift of graceful conversation, in fineness and in gayety, in the art of converting life into a brilliant and ingenious festivity, regarding the world as a drawing-room of refined idlers in which it suffices to be amiable and witty;" while, on the other hand, a colossal monster rose up, "a monster with millions of heads, a blind, startled animal, an entire

[1] Professor Woolsey, in his introduction to the third edition of Lieber's *Civil Liberty*.

[2] *Cf.* De Tocqueville, *France Before the Revolution*.

people pressed down, exasperated and suddenly loosed against the government whose exactions have despoiled it, against the privileged whose rights have reduced it to starvation."[1] Such a state of things was quite unknown in Japan where the abolition of feudalism in 1870 was the last signal to toll the knell of all class privileges, and since then the steady progress of internal reformation has coalesced with the development of the idea of freedom, culminating finally in the establishment of a constitutional government.

§ 87. Thirdly, the constitutional growth of Japan was gradual and steady, and not sudden and radical. In this respect the constitutional growth of Japan may be likened to that of England, and contrasted to that of France. As Freeman rightly says, "the English Parliament is immemorial; it grew step by step out of the older order of things. In France the older order of things utterly vanished; the ground lay open for the creation of a wholly new institution, and the States-General were called into being at the bidding of Philip the Fair."[2] From the beginning of the Imperial dynasty, the Japanese people were allowed the liberty of sending in their petition to the Imperial court whenever they had grievances to be relieved. During the middle ages, when the sovereign power *de facto* fell into the hand of the military magistrates, the people were deprived of this privilege. With the Restoration and the downfall of the military magistracy, not only were the ancient privileges of the people revived, but two deliberative chambers were instantly convoked, although their organization was anything but perfect.[3] Hence, the Constitution-makers of Japan had to perform no such task as the building of an entirely new edifice upon the ground, which is occupied by no fabric based on history.

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[1] Taine, *Ancient Regime*, pp. 398–9.

[2] Freeman, *Growth of the English Constitution*, p. 66.

[3] *Cf. supra*, ch. V. and ch. VIII.

§ 88. Fourthly, Japan had learned many lessons from the constitutional history of foreign countries before she inaugurated constitutional government. The insular nation had been fully aware of the horrors and terrors which European nations had passed through before they established constitutional government. Both the people and the government of Japan had been anxious to avoid such disastrous upheavals and were willing to make concessions each to the other if necessary to maintain the welfare and peace of the country.

§ 89. Fifthly, the Japanese have a peculiar nature of respecting the past. Any movement which aims at the sudden and radical overthrow of an existing regime can in Japan hardly enlist the sympathy of the people. In this respect the Japanese are, it seems to me, somewhat like the English. The ideas which impress the two nations must be based upon the feeling of sympathy with past generations—with traditions, not stereotyped but constantly receiving improvements and reformations. In criticising the French in comparison to the English nation, M. Boutmy eloquently says: "The French delight in the notion of a widespread area into which all nations can enter and join with them in bowing down before the enactments of universal legislation. The English like the idea of a narrow path reaching far back into antiquity, in which they see the centuries of their national life ranged in a long vista one behind the other. The English Constitution is strongly marked by this turn of mind. Historical descent is the very soul of it, just as an ideal fraternity has always been the soul of the French Constitution."[1]

In spite of the impulsive characteristic of the Japanese nation which I have noted in a previous chapter,[2] in spite of our being compared to the fickleness of the French nation, the Japanese, taken as a whole, have the striking peculiarity of respecting the past, the traditions, as does our sister island

[1] Boutmy, *Constitutional Law*, p. 43.

[2] *Cf. supra*, ch. III.

nation on the Atlantic. This again explains in a measure the peaceful adoption of a constitutional government, and the absence of a bloody revolution.

The above five seem to have been main reasons to which Japan's peaceful adoption of a constitutional government is due. It should, however, be remembered that the genius of the Japanese people always challenges our deepest interest in the study of their recent development, political and social, industrial and scientific. The factors above mentioned are simply external. By far the most important factor is the facility with which Japanese minds are adopted to higher ideals and institutions.

CHAPTER XVI

A CRITIQUE ON THE CONSTITUTION OF JAPAN

§ 90. The aim of the present chapter is not to enter into the minute details of the Constitution of Japan, e. g., the order of the succession to the throne, the composition of the Diet, the method of electing the members of the Diet, etc.; but to discuss the spirit and fundamental principles underlying the Constitution, such as the conception of sovereignty, the nature of ministerial responsibility, the status of the legislature, and the like.

The constitution of Japan was promulgated with six supplementary laws, i. e., the Imperial House Law, the Imperial Ordinance Concerning the House of Peers, the Law of the Houses, the Law of Election of the Members of the House of Representatives, and the Law of Finance.[1] To understand the nature of the Japanese Constitution we must take into our consideration not only the Constitution proper, but those organic and supplementary laws as well. The framer of the Constitution, assisted by a staff who had thorough knowledge of western constitutional laws,[2] formulated the constitution proper so as to make it as clear, precise, and simple as pos-

[1] The English translation of these laws is found in Marquis Ito's *Commentaries on Japanese Constitution*, Tokyo, Japan. The reader will also find the Constitution and Election Law in Reginald Dickinson's *Rules and Procedure of Foreign Parliaments*. But the Law of Election of the Members of the House of Representatives was considerably amended two years ago. Therefore the same law as found in these books is not now reliable. The main points of amendment are these: (1) City or Prefecture was made to constitute one election district, while in the old law it was subdivided into several election districts, (2) the property qualification of electors was reduced from the payment of a direct tax of 15 *yen* to that of 10 *yen*, and (3) the property qualification of eligible persons was entirely abolished.

[2] *Cf. supra*, ch. XIV.

sible, incorporating into its provisions fundamental rules for the state, and laying down, to quote the words of Ito, "clear definitions of the relations that ought mutually to exist between the sovereign and his people."[1]

In the method of law-making, the Japanese nation resembles somewhat the French nation. It is a well-known fact that the Anglo-Saxon draftsmanship differs widely from the French.[2] In form and arrangement there is surely a strong family resemblance between French and Japanese enactments. "I must compare the formation of the English Constitution," says M. Boutmy, "to the slowly formed and uncertain deposit at the bottom of a dull and cloudy liquid, as unlike as possible to the rapidly formed precipitates and brilliant crystallizations to which I liken the French constitutions."[3] The history of France shows us, under the name of constitution, one single document conceived all at once, promulgated on a given day, and embodying all the rights of government, and all the guarantees of liberty, in a series of connected chapters. French constitutions "are like mathematical demonstrations or scientific classification, starting with an axiom as a heading; they are all works of art and logic."[4]

Like the French, the Japanese nation is too apt to embarrass itself with wording, logic, classification, simplicity, and comprehensiveness, in an attempt to form a code, no matter whether constitutional or statutory. In this respect the Japanese nation is far from resembling the English who have left the different parts of their constitution just where the wave of history had deposited them, having never attempted to bring them together, to classify or complete them or to make a consistent and coherent whole. It should be remembered, however, that the resemblance of the Japanese constitution to the French is simply in form, and not in spirit.

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[1] *Cf.* the preface to Ito's *Commentaries on Japanese Constitution.*

[2] *Cf.* Ilbert, *Legislative Methods and Forms.*

[3] Boutmy, *Constitutional Law*, p. 50.

[4] Boutmy, *op. cit.*, p. 6.

When we consider its spirit and fundamental principles, we can easily perceive that the one is as far separated from the other as the heavens are from the earth.

§ 91. We insist that the Constitution of Japan, like that of England, shares the nature of a treaty—a treaty between the Emperor and the people; for it is the outcome of prolonged agitation for liberty on the part of the people. But the treaty was formed in an extraordinary manner, namely, the Emperor ordained it without consulting the people on its content, while the people tacitly agreed to give it binding power out of respect for tradition, by which we mean to refer chiefly to the spirit of loyalty, the time-honored custom of respecting the Emperor. Now the essential characteristic of a treaty pure and simple is not to bring down everything to a few simple axioms and to follow them out to their logical consequences. "A treaty cannot help bearing more or less the stamp of circumstances, and reflecting the incoherence, diversity, and complexity of the state of things which it aims at settling; the most it can do is to introduce into that state of things some sort of order and arrangement."[1] These words of M. Boutmy hold true as applied to the Constitution of England, which was actually framed by the deliberation of both the King and the people. But the Japanese Constitution can not be regarded as a treaty pure and simple, as it was framed in accordance with the will of the Emperor. Hence our Constitution was conceived so as to bring down everything to a few simple axioms and to follow them out to their logical consequences, although it bears, we must admit, more or less the stamp of circumstances through the fact that it was the outcome of the popular struggle for freedom. Thus the Constitution of Japan reveals an extraordinary rigidity as do almost all of the French constitutions.

§ 92. In France, when analysed to its very source, sover-

[1] Boutmy, *op. cit.*, p. 169.

eignty rests on the individual alone; public power has authority only because the individual gives up a part of his natural liberty, supposed to be unlimited, and of which he can keep as much as seems good to him. This conception of sovereignty forms the fundamental axiom of the French constitutions, from which all their characteristics follow as its logical consequences, their rigidity being one of them. Starting from the principle of popular sovereignty, the French draw a line "between the two species of powers, regarded as functions, one the power from which emanate all the others, the *constituent* power; the other, the powers which this latter has conferred and established, namely, the *constituted* powers."[1] The extraordinarily rigid nature of the French constitutions, except the Charter of 1814 and that of 1830, proceeds from this theory concerning sovereignty. Unlike the French constitutions, the Constitution of Japan is conceived so as to invest the sovereignty in the throne; but the constitutions of the two countries have a great semblance of similarity in that they both build the whole system of constitutional law in a logical method upon the idea of sovereignty—sovereignty of the people in the one, sovereignty of the Emperor in the other.

§ 92. Frenchmen have "agreed in the assumption, that the political foundations of the State must be placed beyond the reach of the ordinary legislation, and ought to be changed, if at all, only with considerable difficulty, and generally after such delay as may give the nation time for maturely reflecting over any proposed innovation."[2] A constitution, according to the French idea, emanates from the people both in form and in spirit, and therefore should be amended only by the people. It was in accordance with this principle that most French constitutions provided for the contingent assembling of constitutional conventions for the purpose of constitutional revision, which were to be convoked with special

[1] Saleilles, *The Present Constitution of France*, p. 3.

[2] Dicey, *The Law of the Constitution*, p. 403.

solemnity, and to which was assigned the high function of developing the constitution itself.[1] In Japan, the Constitution is supposed to have been nothing but the manifestation of the sovereign power of the King. Hence it is to be amended solely upon the initiation of the King, either or both of the two Houses having no power to initiate an amendment. In regard to the amending power of the Emperor, Marquis Ito says: "The Constitution has been personally determined by His Majesty the Emperor in conformity with the instructions transmitted to him by His Ancestors and He desires to bequeath it to posterity as an immutable code of laws, whose provisions His present subjects and their descendants shall obey forever."[2] Observe that, in the eyes of the framer, the Constitution is nothing more than the private property of the monarch.

Indeed, the Japanese Constitution is far more thoroughgoing than the present Constitution of France in pursuing the logical consequences of the idea of sovereignty to its final extremity. The authors of the existing Republic pursued a most illogical course when they ascribed the nature of constituent powers to the National Assembly;[3] for it is a truism that a sum of zeros, no matter how many, is a zero.[4] It is a *reductio ad absurdum* to admit that representatives chosen solely with a view to the performance of ordinary legislative functions, and "without any special prerogatives bearing upon a revision of the constitution, can, at a given moment, elevate themselves into a sovereign assembly, thus assuming the monopoly of the national sovereignty necessary to form themselves into a constituent assembly."[5] I do not of course

[1] Saleilles, *The Present Constitution of France*, p. 4.

[2] Ito, *Commentaries*, p. 139.

[3] *Cf.*, *The Constitution of France*, Art. 8, Feb. 25, 1875.

[4] This of course does not blind me to the fact that logical arrangement is not the first aim of legislation. Wise legislators should as well regard practical policy and convenience aimed at the promotion of national welfare as the method of legislation.

[5] Saleilles, *op. cit.*, p. 4.

endorse the manner of amendment as prescribed in the Constitution of Japan, for I believe in the sovereignty of the people; but I do not hesitate to admit that the sole initiative power of the Emperor in regard to amendment is the logical consequence of the conception of sovereignty as embodied in our Constitution.

Thus, Japanese constitution-makers have done the work of logicians, engineers, and artists. Unfortunately, however, their logic is built upon the false hypothesis that the monarch is the really sovereign power. Destroy this hypothesis, and the whole edifice of their happy logic crumbles into dust.

It has been pointed out elsewhere that our Constitution is modeled upon the Prussian Constitution; but the former went a step in advance of its pattern in realizing the idea of the sovereignty of the Emperor. Although the Prussian Constitution savors much of absolutism, it still vests the amending power in the Landtag, provided that all amendments shall secure the usual absolute majority in each chamber on two divisions, between which there must elapse a period of at least twenty-one days.[1] Marquis Ito availed himself of circumstances peculiar to his country in embodying in the Constitution he drafted a most preposterous conception in regard to sovereignty.

§ 93. The excessive rigidity of a constitution is apt to give rise to inconveniences and perils, if all laws of a constitutional character are embodied in it. The authors of the present Republic of France have, in this respect, learned something from what the French nation had experienced during half a century. "They have indeed preserved the distinction between the Constitution and ordinary laws, but they have included but a small number of rules among constitutional articles, and so facilitated the process of revision as to make the existing chambers all but a sovereign Parliament."[2] There is manifestly the tendency which now leads

[1] *Cf.*, *The Constitution of Prussia*, Art. 107.

[2] Dicey, *The Law of the Constitution*, p. 408.

French legislators to render the transformation of the constitutional laws easier by transferring to the domain of ordinary legislation matters belonging to the domain of constitutional law.[1] The framer of the Japanese constitution was not blind to the possible dangers and inconveniences of a rigid and immutable constitution. Hence the Laws of the Houses, the Law of Election of the Members of the House of Representatives, and the Law of Finance, were promulgated as ordinary laws amendable by the ordinary method of legislation.

It is noteworthy that the law concerning the House of Peers was promulgated not as an ordinary law, but as an imperial Ordinance to be amended upon the initiation of the Emperor with the consent of the House of Peers alone. Here again we have to notice the tactics of Marquis Ito stamped upon the constitutional laws of Japan. By the said Ordinance, the House of Peers is composed of the following members:—

1. The members of the Imperial Family.
2. Princes and Marquises.
3. Counts, Viscounts, and Barons who have been elected thereto by the members of their respective orders.
4. Persons who have been specially nominated by the Emperor, on account of meritorious services to the State or of erudition.
5. Persons who have been elected one member for each Fu (City) and Ken (Prefecture), by and from among the tax payers of the highest amount of direct national tax on land, industry or trade therein, and who have afterwards been nominated thereto by the Emperor.

From this organization of the House of Peers we can easily see that the Upper House of Japan was planned so as to debar entirely the democratic element, and to check the democratic and progressive measures passed by the lower House. It was created as an organ to uphold the power of

[1] Saleilles, *op. cit.*, p. 2.

Royalty; it was not, probably in the conception of the framer of the constitution, established for the reasons which I have set forth in a previous chapter.[1] During the past decade of constitutional government in Japan, the House of Peers has not necessarily stood against public opinion; it has frequently done good service in the way of modifying unadvised steps taken by the executive and the House of Representatives. But this is simply a temporary phenomenon due chiefly to the character and ability of its present Speaker and several other thoughtful members; the organization of the House itself is too apt to be utilized by statesmen who believe in the divine right of the monarch. Unless the composition of the upper House is reformed to a considerable extent, the true significance of the bicameral legislative system cannot be fully realized in Japan. We find an analogous institution in Prussia where the composition of the Herrenhaus is not prescribed by the constitution, but is delegated to the King, the Constitution simply providing that the members shall be appointed by the crown in heredity or for life, and that a royal ordinance on the subject once issued shall not be changed without the consent of the Landtag.[2] In Prussia as in Japan the members of the upper House appointed at will by the King are not limited in number like the rest, and hence the crown by a creation of peers can control the House at any time.[3] We can easily perceive how zealous the framer of our Constitution was in guarding the Emperor with many royal satellites, so that the light of democracy might not reach the throne.

[1] *Cf. supra*, ch. XII. It may not, however, be just to criticize so severely the upper House of Japan, if we consider the present condition of the English legislature. We can hardly admit that the English House of Lords, in which a large majority of its members are almost never seen present, and in which only three members constitute a majority for doing business, is in compliance with the real aim of bicameral legislature. In Japan such a freedom from, not to say a neglect of, legislative duties on the part of the members of the upper House has wholly been unknown.—*Cf.* Macy, *The English Constitution*, p. 43.

[2] *Cf.*, *The Constitution of Prussia*, Arts. 65–69.

[3] Lowell, *Governments and Parties*, Vol. I., p. 302.

§ 94. The provision of the Constitution relative to the status of the legislature of Japan reads: "The Emperor exercises the legislative power with the consent of the Imperial Diet." So far as this article *per se* is concerned, the Emperor, it may be interpreted, is coördinate with the legislature in the matter of legislation with the Diet. But the framer of the Constitution unmistakably has it in view that "the legislative power is ultimately under the control of the Emperor, while the duty of the Diet is to give advice and consent."[1] Here, Marquis Ito found, no doubt, a strong weapon with which to defend his absolutism in the erroneous principles now prevailing among German jurists.

The opinions of the German jurists in regard to the location of sovereignty may be in the main condensed into two formulæ: first, that sovereignty belongs neither to the people nor to the prince, but the State, considered as indivisible, is the wielder of it; secondly, that sovereignty is identical with force, ascribing the force to the monarch, and "considering the houses which share the legislative power with him not as assemblies to which the people have granted the task of controlling the government, but as councils which the prince has deemed wise to join to himself to aid him in the exercise of his prerogative."[2] Of these two opinions, it is beyond question that the framer and the supporters of the Japanese Constitution advocate the latter. They are fond of ascribing to the Crown a position analogous to that which the brain occupies in the human body. But even the brain is no more useful in the perfect development and exercise of human life than any other part of the body; for all mental activity can manifest itself only through the different parts of the body.

According to the conceptions of legislation as advocated by the framer of the Japanese Constitution there can exist no parliamentary system like that of England. Marquis Ito and

[1] Ito, *Commentaries*, p. 10.

[2] Borgeaud, *Adoption and Amendment of Constitutions*, pt. II., bk. I., ch. I.

his followers insist that the motto "The King reigns but does not govern" has no application to the Emperor of Japan. The Mikado governs as well as reigns. Under such a state of things, the function of the legislative chambers is, as Mr. Lowell says of the German political parties, "negative rather than positive, they can not direct or control the government, but simply criticise and amend its measures."[1] Hence, the chambers are regarded as a council, and not as assemblies which are delegated by the people to control and supervise the government. In such a system adverse criticism and even a positive rejection by the legislature of propositions made by the political leaders of the nation, *i. e.*, the Crown and his ministers, does not frequently result in a change of leadership, *i. e.*, the ministry.

I do not mean to say that the Parliament of Japan has exerted but little influence upon the executive, that if the legislature will not pass the measures proposed by the executive, the latter gets on as well as it can without them, and that if the ministry considers the matter of vital importance, it causes the Parliament to be dissolved in an abusive manner. On the contrary, there is in recent years an unmistakable sign which makes us aware that our Parliament is gradually deviating from the German type and approaching the English system. In the Parliamentary system of England, "not only does the Crown merely reign and not govern, but those who do govern are the ministers selected nominally by the crown and in reality by the minister 'sent for' by the Crown to form a ministry, and obliged by custom to be in harmony with the majority in the House of Commons."[2] Although the party system in Japan is not as complete as in England, still the person whom the Crown orders to form a Cabinet is practically a statesman who, by reason of his political ability, has come to be recognized as the leader of, or as being in harmony or on friendly terms with, the party in the majority in the two

[1] Lowell, *op. cit.*, Vol. II., p. 503.

[2] Goodnow, *Politics and Administration*, p. 177.

Houses. The Executive department, which was conceived by the framers of the Constitution as transcendent over, and unfounded by the Parliament, has been surely tending towards responsible ministry—responsible in reality, if not in form, to the Parliament.[1]

§ 95. It has been shown that our Constitution is logical, systematic, and exceedingly rigid. But the logic is built, as we have also noted, upon a false hypothesis. The nation is striving to escape from the despotism of this false logic. For my part, I believe that even under the present Constitution the assertion of popular sovereignty is not a *chateau en espagne;* for the Constitution itself is inaugurated in accordance with the claim of the people.

Besides, the value of a constitution depends upon the interpretation of its articles. Without judicious interpretation, no constitution can achieve a wholesome growth.[2] This is especially true of the Japanese constitution in which only the fundamental rules of the State are embodied in language whose import is deep and comprehensive. An article in our Constitution, for instance, declares: "The Emperor is the head of the Empire, combining in Himself the rights of sovereignty, and exercises them, according to the provisions of the present Constitution."[3] This article may, as do the believers in the divine right of the Emperor, be interpreted as follows: "The sovereign power of reigning over and of governing the State, is inherited by the Emperor from his Ancestors, and by him bequeathed to His posterity;" hence, "all the legislative as well as executive powers of State, by means of which He reigns over the country and governs the people, are united in this Most Ex-

[1] Mr. Bushby's article on the *Parliamentary Government in Japan* in the Nineteenth Century Review, July, 1899, has, except a few superficial observations, a fair presentation of a modern tendency towards the English form of responsible government in Japan.

[2] *Cf.*, Tiedman, *The Unwritten Constitution of the United States*, chs. XI., XII.

[3] *Constitution*, Art. 4.

alted Personage."[1] But the same article can be interpreted in this way: "The people by accepting the Constitution have agreed to put the Emperor at the head of the Empire, empowering him thereby to wield the legal sovereignty, the exercise of which is rigorously defined by the law." To democratize our Constitution we need not redraft, or even revise, it; its interpretation in the light of reason and justice will be sufficient for some generations to come, if not forever.

Again the Constitution says: "The respective Ministers of State shall give their advice to the Emperor, and be responsible for it."[2] This provision may be interpreted as the prescription of Ministers' responsibility to the Emperor and not to the Parliament, *i. e.*, the people. But it can also be interpreted as a clause which provides for the Ministers' responsibility to the Parliament. Why can we not say that, as the people agreed to put the Crown beyond legal responsibility, Ministers are made responsible to the people for the Crown?

A constitution, however rigid, is governed by the law of evolution; and its evolution may be achieved to a great degree through its sound interpretation. There was a time when the expression, "the King can do no wrong," was believed to mean that the sovereign is something supernatural, and therefore free from wrong conduct. But such a foolish idea had been renounced long ago. Nowadays, the same expression is believed to signify that every official act of the Crown, which is done in the manner prescribed by law, is lawful, while every act done under colour of the Royal authority, but not in the proper manner, is not an official act of the Crown. Thus viewed, "no injury, no legal wrong, can be done by the King, because all his official acts are done in accordance with law, and because no unlawful act can be recognized as an act of the Crown."[3]

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[1] Ito, *op. cit.*, p. 7.

[2] *Constitution*, Art. 55.

[3] Hearn, *The Government of England*, p. 20.

A still more significant illustration of two different interpretations of a same constitutional provision can be found in the constitution of the United States and that of France. The Federal Constitution of the United States provides that the President "shall take care that the laws be faithfully executed."[1] The French Constitution of February 25, 1875, provides that the President "looks after and secures" the execution of laws.[2] So far as the wording is concerned there is no difference between the two provisions. But this provision in the French Constitution has been interpreted in a way quite different from that in which the similar provision in the American Constitution has been interpreted. In France the President is allowed an extensive ordinance power. By means of ordinances, the President is able to supplement the law which he promulgates with the consent of the Chambers, even where the legislature has not expressly delegated any such power to him. And this wide power of issuing ordinances is said to result from the constitutional article above cited. It will be a bad sort of heresy, however, on this side of the Atlantic to so interpret the similar article in the Constitution of the United States as to give the President such an extensive ordinance power as the French President is given. Professor Goodnow, in his *Comparative Administrative Law*, explains this peculiar phenomenon in France by ascribing it to the monarchical tradition of the country.[3]

We have cited the above instances in order to emphasize that one and the same expression can be interpreted in two such widely different manners. Sound interpretation is, therefore, a *sine qua non* of the efficacious working of a constitution.

§ 96. I am not a whit disloyal to the Royal family of the country to which I belong. Nor do I wish to belittle the dignity of the throne. But I believe that in every phase of

[1] *Constitution*, Art. II., sect. 3.

[2] *Constitution*, Art. 3.

[3] *Comparative Administrative Law*, Vol. I., pp. 85–86.

public affairs the Royal will should be intimated through the appropriate channel as couched in law which is the embodiment of the will of the people, although the expression of the Royal will might be said to be conclusive. It would be a most preposterous sort of view under a constitutional regime to say, as does Marquis Ito, that the law has no power to hold the Emperor accountable to it.[1] In a constitutional country the ultimate sovereignty, or political sovereignty,[2] if you please, resides, I believe, in the people. The Royal will in contemplation of law, as Professor Hearn points out, is by no means the mere personal will of the King. It is the will which is displayed in his court, not in his chamber.[3] Thus the Royal will is at bottom, nothing more than the creation of law; outside of the law there can exist no Royal will. For my part, I sincerely hope that the time will arrive when the Emperor of Japan reigns, but does not govern, preserving at the same time the dignity of the throne and keeping the respect of the people. Then the government of Japan will have become democratic in spirit as is that of England, although in form it may well be monarchical.

We should exceed the limits within which we promised to keep ourselves at the outset of the present chapter, if we follow out to the very end the chain of reasoning which we have begun. We believe that we have already made clear something of the spirit and fundamental principles of our Constitution. We would rather stop here. Not to be misconstrued by the conservative, however, we conclude this chapter by quoting the following passage from Freeman, which may, we hope, be adapted to the condition of Japan:

"The circumstances of our history have made England an hereditary Monarchy, just as the circumstances of the history of Switzerland have made that country a Federal Commonwealth. And no reasonable person will seek to disturb an

[1] *Cf.*, Ito, *op. cit.*, p. 6.

[2] Dicey, *The Law of the Constitution*, pp. 358–9.

[3] Hearn, *Government of England*, pp. 18–19.

institution which, like other English institutions, has grown up because it was wanted..... Our system gives the State a personal chief, a personal embodiment of the national being, which draws to itself those feelings of personal homage and duty which a large class of mankind find it hard to look upon as due to the more abstract ideas of Law and Commonwealth..... Our present Sovereign reigns by as good a right as Ælfred or Harold, for she reigns by the same right by which they reigned, *by the will of the people*, embodied in the Act of Parliament which made the crown of Ælfred and Harold hereditary in her ancestress. And, reigning by the same right by which they reigned, she reigns also for the same ends, for the common good of the nation *of which the law has made her the head*."[1]

[1] Freeman, *Growth of the English Constitution*, pp. 156–159; Italics are mine.

CHAPTER XVII

GROWTH OF SOCIAL DEMOCRATIC IDEAS

§ 97. We have seen in previous chapters that the dominant idea of the Japanese nation during a score of years preceding the adoption of the constitution was Individualism coupled with Liberalism. "*Laissez faire, laissez passer*" of Gournay was the motto of leading men, of politicians, of journals, and of the people. But, from Individualism to Socialism the transition is not very difficult, although the gulf between these two *isms* seems apparently very wide. Modern Socialism may, in a certain sense, be regarded as the offspring of Individualism, as the resultant of free competition, and as the condition for the approach to the Individualist ideal.[1] Individualism has its own mission when the masses are under the yoke of absolute government. But when the people take the supervision of the government into their own hands, when the condition of society changes with the change of political organization, Individualism should be remodeled and harmonized with the new needs of society. It is, therefore, a matter of no wonder that the Japanese people who once admired the Individualism of Mill, and even of Spencer, soon began to listen to the gospel of Socialism.

§ 98. It should be remembered, however, that the Japanese government has been far from adhering to the *laissez faire* principle. It has already been shown that the paternalistic school of the earlier period of New Japan derived its political principles from Bluntschli, who is decidedly opposed to the Individualistic view of governmental functions. We

[1] *Cf.* Sidney Oliver, *Moral Basis of Socialism*, in the Fabian Essays in Socialism.

have also observed that the paternalistic school was welcomed by the government.[1] Later on, when Marquis Ito favored German absolutism, the German idea of state interference became more influential. Many students who had been sent to Germany came back with a knowledge of the theory and policy of the administration of the country in which they had studied. Thus our government registers, inspects, and controls many private industries and enterprises. In addition to registering births, marriages, deaths, and electors, the government registers all lawyers, physicians, patent agents, brokers, newspaper proprietors, playing-card makers, brewers, bankers; all corporations, political associations, insurance companies, lands, houses, ships, arms, dogs, cabs, omnibuses, books, plays, newspapers, trade-marks, and patents; lodging houses, public houses, refreshment-houses, theaters, music-halls, places of worship, and so forth. It carries on elementary and higher education; it owns many factories; it established a monopoly in tobacco; it possesses and manages a considerable portion of the railways; and it executes many other functions which were at one time in many countries left to private enterprise and were a source of legitimate investment of individual capital.

Most of the registered industries and business operations are subjected to strict inspection and criticism, as are railways, tramways, ships, slaughter-houses, dairies, milk-shops, and common lodging houses. Thus the tendency has been for the government to undertake the supervision and control of many enterprises which were formerly left wholly in the hands of private individuals.

§ 99. Notwithstanding what has been said in the foregoing section, the protection of the working class has been sadly neglected. We have no factory law, no employer's liability act, not to say workingman's insurance law. There is no law which prescribes the age of the worker, the hours of

[1] *Cf. supra*, ch. IX.

work, the amount of air and light, the cubic space, the temperature, and the necessary lavatory accommodation. The law is silent with regard to holidays and meal-times. No law regulates where, when, and how wages shall be paid; how machinery, staircases, lift holes, mines, and quarries are to be fenced and guarded; how and when the plant shall be cleaned, repaired, and worked. An army of children and women are mercilessly employed in factories, oftentimes under the lash of heartless overseers. Heartrending accidents in industrial operations are reported from time to time.

During the past decade the industry of Japan has progressed by leaps and bounds. The Japan-China war of 1894–95, which ended in a great victory for Japan, has swelled the tide of the industrial expansion of Japan to a very great extent. Industrially Japan is now in a transition period. Steam engines and electric machines, which wrought the Industrial Revolution in the West, are now producing a similar effect in the Island Empire. Modern Social Democracy is at bottom a product of the Industrial Revolution. It is not the creation of Karl Marx or Ferdinand Lassalle, but of Newcomen or Watt, Hargreaves or Crompton, Kay or Arkwright —whoever may be considered to have contributed the most toward the Industrial Revolution of the eighteenth century.[1] Without the invention of the spinning jenny, of the power-loom weaving, of the steam-hammer, and of the locomotive engine, modern Socialistic thinkers there might never have been. Wherever the Industrial Revolution has been set on foot, we find the antagonism between the *bourgeoisie* and the *proletariat*, and with it we hear the cry of social democracy. It is only natural that in Japan, where the Industrial Revolution is fairly on its way, Socialism has found disciples.

§ 100. While the government, though interfering in many private enterprises, has been neglecting the protection of the

[1] *Cf.* Sidney Webb, *Historic Basis of Socialism;* and William Clarke, *Industrial Basis of Socialism*, in the Fabian Essays in Socialism.

working class, the *bourgeoisie* whose moral conception has been corrupted by a misconstrued Individualism and Utilitarianism, has become more and more unscrupulously "on the make." The *laissez faire* doctrine has been more strongly advocated by the people than by the government.

Besides, the moral principles (especially the chivalrous spirit) which had furnished the Japanese nation with the canons for daily conduct were washed away by the tide of recent revolutions, both political and industrial, and there has appeared as yet no moral principle in their stead. The mammonistic idea is overwhelming and uncontrollable in every walk of life, especially among the wealthy class and the *entrepreneurs*. Piety, generosity, mercifulness, and, above all, self-sacrifice, which have descended from the knighthood of olden Japan, are constantly giving way to the greed of gain and the aspiration for wealth. Not self-sacrifice, but selfishness is the leading spirit of the so-called upper class, and its vicious influence is almost irresistible in every circle of the community.

To-day in Japan it is extremely difficult to assume philanthropic undertakings on account of the absence of public-spirited men and women who take interest in such noble undertakings. Wealthy people are rarely generous enough to donate any considerable amount to the cause of social reform. Naturally the noble work of elevating the lower classes has been left almost untouched. Envy, enmity, discontent, uneasiness on the part of the poor; and vanity, extravagance, luxury, and debauchery on the side of the rich,—these are but the symptoms of the great social conflict which will surely arise in Japan in the near future. "The country that is more developed industrially only shows, to the less developed, the image of its own future."[1]

§ 101. Under such circumstances it is simply as a matter of course that Social Democracy is now preached in Japan where

[1] Karl Marx, in the introduction to the first edition of his *Capital*.

industrial tranquillity had prevailed only a decade ago. Five years ago a coterie of men inaugurated an association under the title of the Socialist Association, having for its object social reform on the basis of socialism. Its motto, as that of the Fabian Society of England, is this: "For the right moment you must wait, as Fabius did most patiently, when warring against Hannibal, though many censured his delays; but when the time comes you must strike hard, as Fabius did, or your waiting will be in vain and fruitless." The object of this Association is as follows:[1]

I. The Socialist Association aims at the reorganization of Society by the emancipation of Land and industrial Capital from individual and class ownership, and the vesting of them in the community for the general benefit.

II. The Association accordingly works for the extinction of private property in land and of the consequent individual appropriation, in the form of Rent, of the price paid for permission to use the earth as well as for the advantages of superior soils and sites.

III. The Association, further, works for the transfer to the community of the administration of such industrial Capital as can conveniently be managed socially. For, owing to the monopoly of the means of production in the past, industrial inventions and the transformation of surplus income into Capital have mainly enriched the proprietary class, the worker being now dependent on that class for leave to earn a living.

IV. If these measures be carried out, without compensation (though not without such relief to expropriated individuals as may seem fit to the community), Rent and

[1] In describing the aim and work of the Socialist Association of Japan I have deliberately adopted the wording of the official statement of the aim and work of the Fabian Society, hoping that it will be of greater convenience in order to convince the reader of the similar nature of the two associations. For the said official statement of the Fabian Society, the reader is referred to appendix II in Ely's *Socialism and Social Reform*.

Interest will be added to the reward of labour, the idle class now living on the labour of others will necessarily disappear, and practical equality of opportunity will be maintained by the spontaneous action of economic forces with much less interference with personal liberty than the present system entails.

V. For the attainment of these ends the Association looks to the spread of Socialist opinions, and the social and political changes consequent thereon. It seeks to promote these by the general dissemination of knowledge as to the relation between the individual and Society in its economic, ethical, and political aspects.

VI. The Association seeks recruits from all ranks, believing that not only those who suffer from the present system, but also many, who are themselves enriched by it, recognize its evils and would welcome a remedy.

The regular meeting of the Association is held monthly at the Unitarian Hall of Tokyo. It also frequently holds meetings of a more public character, for the promulgation of Socialist opinions. The leading members of the Socialist association, all of whom are educated men, made a close study of modern socialist writers, endeavoring especially to see in what way the socialist idea could be introduced into current politics. In short the society may be regarded in many respects as the Japanese counterpart of the Fabian Society.[1] Its ideals are lofty, and it patiently waits for the right moment in which to realize its ideals, believing in the elaborately slow process of social amelioration. Its members are men of character. Their number is not at present very large, nor does the society struggle to increase the membership, welcoming merely those who are sincerely anxious of the promotion of social welfare. Real reform of society can be effected, they believe, only through the self-sacrificing and honest efforts of law-abiding, God-fearing, and intelligent men and women.

[1] For the work and activities of the Fabian Society see Woods' *English Social Movement*, pp. 50–61.

§ 102. Seeing that the condition of laborers is going from bad to worse, some of the members of the Socialist Association tried to organize a political party under the title of the Social Democratic Party. But before the party in contemplation made its appearance later in the Spring of 1901, the government took high-handed measures and summarily suppressed the attempted political organization.

We have in Japan an obnoxious law entitled the "Law for Preserving Public Peace," which requires organizers of political parties to apply to the authorities for the permission to promote the party. The Law authorizes the government to grant or to withhold the permission at its discretion. If the government dissolves or forbids the organization of a political association, it simply declares that the platform or movement of the association in question is prejudicial to the maintenance of public peace, giving no clear reason as to why it is prejudicial to public peace.

The promoters of the suppressed Social Democratic Party were men of character and learning who deserve the respect and confidence of their countrymen. It had naturally been expected that a political party inaugurated by these persons would be such as to enlist the sympathy of many of their fellow-countrymen. The suppressive measure came, therefore, as lightning out of a clear sky, and greatly surprised those who believed that the new party was not of such a dangerous character as to disturb the order of the community. Indeed, people are left in the dark as to the reasons which induced the authorities to prohibit the organization of the new party.

§ 103. The principle of state interference, when adopted by a government which savors of absolutism, frequently does injury rather than good. The suppression of the Social Democratic Party in Japan furnishes us a good illustration of this fact. The Japanese government considerably influenced by German politics has evidently abused the principle of state interference. It dreams of preserving industrial peace

by putting down every political party which may aim at the thoroughgoing reform of society, by hindering labor movements at every step,[1] instead of providing for the protection and elevation of the working class.

In this respect our government is certainly fifty years or a century behind European governments. The suppression of labor movements and Socialist propaganda is in European countries a thing of the past.[2] The modern history of civilized countries unmistakably shows us that it is extremely unwise to struggle to suppress Social Democratic movements. Whether it is a sound theory of society or a false idea, Social Democracy is manifestly a world force.

§ 104. It is now important to note the platform of the suppressed Social Democratic Party. It contains a long preliminary discussion on the defects of the present social regime. The discussion is modeled on the manifesto of the Communist Party as formulated by Karl Marx and Frederick Engels in 1848. After discussing the defects and incompleteness of the present social organization, the manifesto enumerates the following items as the ideals of the party:

I. Universal brotherhood.
II. Abolition of army and navy, and the realization of international peace.
III. Abolition of class distinctions, political and economic.

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[1] The Law for Preserving Public Peace is so carefully provisioned that it makes an effective labor movement practically impossible. The reader is, however, cautioned not to hasten to the conclusion that our Law for Preserving Public Peace does, as did the Act 39, Geo. III., C. 81, 1799, of England, expressly forbid the combination of labourers. It forbids seduction, threatening or intimidation resorted to by workers against their fellow-workers or employer as a means of securing better terms. The history of the trade unions of Japan is not, as in the history of English trade unions, fraught with the records of "the midnight meeting of patriots in the corner of the field, the buried box of records, the secret oath, the long terms of imprisonment of the leading officials." (Webb, *History of Trade Unionism*, p. 57.) But if our law is carried out, as it has been, strenuously and partially, the result will be equivalent to the total prohibition of labour unions.

[2] *Cf. Fabian Essays in Socialism*, p. 14.

IV. Common ownership of land and capital.
V. Public ownership of railways, steamers, canals, bridges, and other means of communication.
VI. Equitable distribution of wealth.
VII. Equal share of political rights by all people.
VIII. Complete education of the people at the expense of the government.

These are the ideals which the suppressed Party aspires to realize. But they can be realized, if at all, only through the slow process of further social amelioration and evolution. Meanwhile, says the platform, we must laboriously strive to approach the final goal and grasp everything within our reach, which might prompt the realization of the ideals. Therefore, the denounced manifesto mentions the following program to be directly adopted as palliatives for the manifold evils of the present society:

1. Government shall own and manage all railways throughout the country.

2. Street railways and electric and gas supply shall be controlled by municipal governments.

3. All urban lands shall be owned by municipal governments.

4. Government shall retain the right of patent, giving reasonable reward to the inventor of patented matter.

5. Government shall modify house rent in proportion to the value of the house.

6. Indirect taxes shall be replaced by direct taxes.

7. Elementary education shall be free and text books shall be freely supplied to the children of elementary schools.

8. Labor bureaus shall be established for the purpose of investigating every affair relating to the laboring class.

9. Children under certain years of age shall not be permitted to work in factories.

10. Women shall not be employed in any work which is injurious to health or morals, or to both.

11. Juvenile and female workers shall not be employed at night.

12. Labor shall be prohibited on Sunday.

13. A maximum working day of eight hours shall be established by law.

14. Employer's liability law shall be promptly enacted.

15. Laborers shall be allowed the complete right of coalition.

16. Factory laws shall be promptly promulgated.

17. Protective legislation for peasants shall be established.

18. All insurance shall be undertaken and managed by the government.

19. Universal suffrage shall be adopted.

20. Referendum shall be resorted to as regards affairs of principal importance.

21. The administration of justice shall be free and gratuitous for all members of society.

22. The House of Peers shall be abolished.

23. The number of the standing army shall be reduced.

24. The Law for Preserving Public Peace shall be promptly repealed.

25. Freedom of speech shall be absolutely guaranteed.

26. All elections shall be conducted by secret ballot, and the ballot by proxy shall be prohibited.

27. A system of proportional representation should be adopted.

While the first portion of the manifesto is really a kind of summary of Socialism in its strict sense, the last 27 items are socialistic in the sense in which the word is generally used in Continental Europe. Indeed, some parts of the latter programme have already been realized in the West, and are quite within the province of practical legislation. Yet, to the conservative of Japan even such a programme must have appeared intolerably radical. The thoughtful will not, however, fail to perceive that the Japanese government resorted to the most unwise measure when it put down the Social Democratic Party.

§ 105. Besides the general economic and political theory embodied in the Social Democrat manifesto, there seems to have been one thing, which, though not expressed in the manifesto, was significant enough to give rise to alarm among the so-called patriots. I refer to the possible result of Democratic propaganda. Democracy and Imperialism or Mikadoism are evidently incompatible terms. Where sovereign power has rested upon a single head for thousands of years, where the emperor is declared to be "sacred and inviolable" in the constitution, and where most people have never dreamed of the advisability and possibility of thoroughly changing the present form of government, it must be alarming to statesmen, and still more to the Imperial family, that democracy should come into play even in the smallest degree. So far as the expressed aims of the manifesto of the suppressed Social Democratic Party are concerned, we cannot perceive an idea which is detrimental to the further existence of the long revered Dynasty. Nor did the promoters of the Party aim at the subversion of the Imperial government within a conceivable period of time. On the contrary, they are no less loyal to the Emperor than any other people; and, therefore, they conceived of the distribution of political rights as well as economical welfare equally and widely among all classes of people, because it will only be thus, they believe, that the masses of people will come into a closer contact with, and more respect and love, our Emperor. It must be borne in mind, however, that a tendency of present-day Socialism is to carry on democracy to its final end, which will after all result in the total subversion of Imperialism. If we read between lines, we cannot but recognize that the condemned manifesto implies the realization of democracy to its full extent sooner or later. Indeed, it appears that the word "Democracy" is more feared than the word "Socialism" by the conservative of Japan.

The Social Democrats of Japan are not, it should be remembered, necessarily at variance with their comrades in the

West as to the future political organization of the State. Believing in the slow process of social amelioration, conscious of the peculiar condition of Japan at present, the promoters of the suppressed Party, however, deliberately kept silent on this particular question. The Social Democratic Federation of England expressly advocates the "abolition of the monarchy." [1] But in Japan at present it may not be wise to declare openly such a conviction. "For the right moment you must wait as Fabius did most patiently." [2]

§ 106. It has repeatedly been contended *inter alia* that Socialism is essentially materialistic and irreligious. Such criticism may be deserved when applied to passionate utterances of demagogical socialists, but not to Socialism itself.

Marx's interpretation of history has been, with an air of censure, termed "historical materialism." But it is materialistic only in that it ascribes the *genesis* of the moral law principally to economic factors. It is not materialistic since it certainly recognizes the *existence* and importance of the moral law which we are all bound to regard. Nor are economic factors, according to Marxian theory, the only factors in the progress of the world, moral and material. We should understand, "by the theory of economic interpretation of history, not that all history is to be explained in economic terms alone, but that the chief considerations in human progress are the social considerations and that the important factor in social change is the economic factor. Economic interpretation of history means, not that the economic relations exert an exclusive influence, but that they exert a preponderant influence in shaping the progress of society." [3] Engels was always

[1] *Cf.* Programme of the Social-Democratic Federation, an appendix to Ely's *Socialism and Social Reform*.

[2] For a fuller description of the condemned Social Democratic Party see my article on "*Socialism in Japan*," in the *International Socialist Review*, Feb., 1902.

[3] Prof. Seligman, *Economic Interpretation of History*, in the *Political Science Quarterly*, March 1, 1902.

anxious to make it understood that the actual form of the social organization is often determined by political, legal, philosophical, and religious theories and conceptions. These concessions do not in the least mean that Marxists abandoned their essential contention that the economic factor in the widest sense of the term is principally responsible for the basic permanent changes in the condition of society. Through Sociological researches it has become almost indisputable that all ethical conceptions, social and individual, are the outgrowth of social forces.

The charge that Social Democrats are Materialists is without ground, especially as applied to Japanese Socialists. Socialists of Japan at present may indeed be termed Christian Socialists. Most of them are devout believers in Christianity. They are aware that the advanced doctrines (not dogmaticism) of Christianity are not contrary to, and should be harmonized with, the economic interpretation of history in the broad sense of the term. Christianity and the progress of modern thought join hands.

§107. Whether Social Democratic movements will lead Japan into the right path or entail vicious results alongside of many salutary effects, cannot safely be predicted. Nevertheless this one thing seems undeniable, namely, that Social Democracy will very materially assist in the destruction of the survivals of feudalism and the superstitious notion relative to the divine descent of the sovereign. Such have been the results in England and in almost all other western countries. Take the history of England for example. "The final collapse of Mediævalism came, not by the Great Rebellion nor by the Whig Treason of 1688, nor yet by the rule of the Great Commoner, but by the Industrial Revolution of the eighteenth century, which created the England of to-day." [1]

The inauguration of the constitutional government in Japan was not a final stroke which put an end to all the survivals of

[1] *Fabian Essays in Socialism*, p. 13.

feudalism. A much stronger factor in the realization of modernity in Japan is found in the advent of Social Democracy, the twin sister of the Industrial Revolution.

Another possible effect of the propagation of Social Democracy is worthy of a passing note. "Socialism need not necessarily be viewed and is not always viewed as a body of economic doctrine; it may also be regarded as a theory of society."[1] As such it has been a cogent stimulus for the advancement of the study of society both practically and philosophically. Apart from the question whether the Socialist theory of society is sound or unsound, we have reason to thank Socialism for the promotion of the study of society from a broader point of view. The honor is justly claimed by the pioneers of Socialism in Japan of having aroused an intense interest in the study of social problems and social philosophy which were neglected until quite recently.

[1] Papers and Proceedings of the Fourteenth Annual Meeting of the American Economic Association, p. 391.

CHAPTER XVIII

CONCLUDING REMARKS

§ 108. Before concluding this essay it seems proper as well as necessary to summarize what has been set forth in the foregoing pages so that the reader may not lose the thread which connects, as it were, the different parts of my discourse.

In order to understand clearly the political growth of a nation, we must go back to its very origin, wherein we shall find the characteristics of the nation. But the characteristics of any nation are not entirely formed *a priori;* they are, as well, the outcome of, and modified by, the environments in which the nation grows and exists. A progressive or conservative nature, an impulsive or rational character, bravery or cowardice, can to a great extent be found in a nation by the method which has been just alluded to. By pursuing the same method it has been concluded that the Japanese nation is inherently progressive and gallant, and has a passionate love for country, but is, on the other hand, impulsive and fickle, lacking the power of deep meditation and thoughtfulness.[1]

We have also noted that the impulsive quality has, in spite of its dangerous nature, some advantages in that it makes the nation sympathize with that which is higher and better than what it already possesses. An extraordinarily rapid progress of New Japan, both political and social, is nothing more than the manifestation of what is deeply seated in the minds of her people.

I believe that I have also explained the reason why the progress of the Japanese had been relatively slow until their country was opened to foreign intercourse — relatively slow, because the great progress of the island nation has never been wholly arrested, notwithstanding the manifold vicissitudes it has encountered.

[1] *Cf. supra*, chs. I., II. and III.

It has been often said that the realization of a constitutional government in Japan is wholly due to the influence of Western political ideas. In this essay, too, great stress has been laid upon the important part which Western political ideas have played in the constitutional growth of Japan;[1] but nevertheless we are not blind to the fact that higher thoughts can not grow in a land where the people are not capable of accepting and digesting them according to their own ideas.

§ 109. It has also been shown that the recent regeneration of Japan, her emancipation from feudalism, is, in certain sense, the restoration of the ancient regime, under which the people have enjoyed more liberty and welfare than in the intermediate times.[2] "Without indulging in any Utopian dreams," says Freeman, "without picturing to ourselves the England of a thousand years back as an earthly paradise, the voice of sober history does assuredly teach us that those distant times have really much in common with our own, much in which we are really nearer to them than to times which, in a mere reckoning of years, are far less distant from us."[3] What Freeman says about England is applicable to Japan. We deny that the present form of the government of Japan was born phœnix-like without an antecedent in our history. Or, if it was born phœnix-like in the virgin soil of New Japan, it ought to be remembered that even a phœnix rises from its own ashes, and that it is not a bird of passage, neither does it fly on pinions borrowed from other birds.

§ 110. As to the impulsive character of the Japanese nation, I should add a few remarks. We have frequently been compared to the French nation on account of our fickleness and our thoughtlessness. What is the character of Frenchmen? No writer has, so far as I know, answered this question so eloquently and vividly as de Tocqueville:

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[1] *Cf. supra*, chs. VIII., IX., XI., and XII.

[2] *Cf. supra*, chs. IV., V.

[3] Freeman, *Growth of the English Constitution*, p. 158.

"When I consider this people in itself it strikes me as more extraordinary than any event in its own annals. Was there ever any nation on the face of the earth so full of contrasts and so extreme in all its actions; more swayed by sensations, less by principles; led therefore always to do either worse or better than was expected of it, sometimes below the common level of humanity, sometimes greatly above it; a people so unalterable in its leading instincts, that its likeness may still be recognized in descriptions written two or three thousand years ago, but at the same time so mutable in its daily thoughts and in its tastes as to become a spectacle and an amazement to itself, and to be as much surprised as the rest of the world at the sight of what it has done; a people beyond all others the child of home and the slave of habit, when left to itself, but when once torn against its will from the native hearth and from its daily pursuits, ready to go to the end of the world and to dare all things; indocile by temperament, yet accepting the arbitrary and even the violent rule of a sovereign more readily than the free and regular government of the chief citizen; to-day the declared enemy of all obedience, to-morrow serving with a sort of passion which the nations best adapted for servitude cannot attain; guided by a thread so long as no one resists, ungovernable when the example of resistance has once been given; always deceiving its masters, who fear it either too little or too much; never so free that it is hopeless to enslave it, or so enslaved that it may not break the yoke again; apt for all things but excelling only in war; adoring chance, force, success, splendor and noise, more than true glory; more capable of heroism than of virtue, of genius than of good sense, ready to conceive immense designs rather than to accomplish great undertakings; the most brilliant and the most dangerous of the nations of Europe and that best fitted to become by turns an object of admiration, of hatred, of pity, of terror, but never of indifference!"[1]

That the Japanese nation has some of the undesirable char-

[1] De Tocqueville, *France Before the Revolution*, p. 257.

acteristics vividly pictured by de Tocqueville is, perhaps, true.[1] But our history has, it seems to me, proved that the impulsive qualities of the island nation have been greatly modified through the influence of circumstances peculiar to our country. As I have pointed out more than once, the ancestors of the Japanese Emperor were looked on as *kamis*, as sacred personages descended from heaven. Besides, the Crown has always been on the side of the people, willing, in the earliest times, to relieve them of their grievances, and desiring, during the middle ages, to protect the people from the oppression of military rulers. Through these circumstances, the spirit of loyalty has become almost inherent in the Japanese nation. This spirit will survive all the superstitions concerning the origin of the sovereign, and may continue to exist for some time to come in its truer form. What I have denounced in this essay is that harmful sort of blind loyalty, the theory of the divine origin of the Emperor and of his sacred right which is apt to lead the ruler into the quagmires of absolutism. What may well be preserved is loyalty in its true sense (loyalty to the principle of government), entirely free from superstitious notions.[2] The former after all gives rise to hatred and disgust on the part of the people. It is only in the latter sort of loyalty that the love and respect for the Emperor are maintained and strengthened. I hope that the true spirit of loyalty will be, as it has already been, of some avail in modifying the violent political actions of the nation.

Besides, our ethical system in the feudal ages as manifested in the spirit of chivalry has glorified self-renunciation and the suppression of violent passions as the highest virtue of man,

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[1] Compare these words of de Tocqueville's with what M. Bousquet says about the character of the Japanese (*supra* p. 33, footnote 1), and you will find that there is a great deal of semblance of similarity between the character of the French and that of the Japanese.

[2] What I have just said should not be taken as a prediction of the final form of our government. I do not wish to predict the destiny of monarchy, especially of the monarchy of Japan.

and has on that account been of some service in modifying the impulsive nature of our nation.[1]

In addition to the influence of the chivalrous spirit, Buddhism has also been of some avail in restraining the unfortunate instinct of the island nation.[2] May we not rightly hope that the advancement of the rational mind through the influence of perfect education, joined with the circumstances we have just mentioned, will finally emancipate the island nation from the bondage of impulsive actions?

Even the English nation, which is now regarded as a most thoughtful, and even conservative, nation, passed through the stage in which there was evidence of traits of levity and changefulness. Milton in his treatise on *A Free Commonwealth* published in 1660, referred to the fickleness which is attributed to Englishmen as they are islanders.[3] But it is this same nation that Freeman proudly and eloquently admires.

"The wisdom of our forefathers," says he, "was ever shown, not in a dull and senseless clinging to things as they were at any given moment, but in that spirit, the spirit alike of the true reformer and the true conservative, which keeps the whole fabric standing, by repairing and improving from time to time whatever parts of it stand in need of repair or improvement. Let ancient customs prevail; let us ever stand fast in the old paths. But the old paths have in England ever been the paths of progress; the ancient custom has ever been to shrink from

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[1] For the severe discipline of chivalry in feudal Japan, see Lafcadio Hearn's *Kokoro*. Mr. Arthur May Knapp says: "Not even the training of Spartan youth was harder than that in which the *samurai* of only a generation ago were reared, and in comparison with it the training of European chivalry was holiday pastime." Again: "Not only, therefore, because of the actual personal training of Japan's best in the school of chivalry, but also because that school surpassed in its teachings of honor that of our far-off ancestry, should we give to Japan the credit of possessing a higher civilization than ours in the distinctive qualities which we owe to our own knightly descent."—Knapp, *Feudal and Modern Japan*, pp. 63, 65.

[2] *Cf. supra*, ch. VII.

[3] Milton, *The Ready and Easy Way to Establish a Free Commonwealth*.

mere change for the sake of change, but fearlessly to change whenever change was really needed."[1]

I have alluded elsewhere to the respect for the past and for traditions which is prevalent among the Japanese people.[2] When we closely examine our history, carefully observe the tendencies of political events which transpired during the past several decades, we feel that we have powerful reasons for believing that the Japanese nation will make the same wholesome improvements in constitutional laws and in practical politics which marks the development of the English nation. We believe that the time will arrive sooner or later when we can boast with Freeman of "the spirit alike of the true reformer and the true conservative."

§ 111. It is, however, a matter of great regret that the Japanese government has recently shown signs of intolerance towards the organized movement of the Social Democrats.[3] If the government continues to resort to high-handed measures against Social Democrats, there will be no alternative but the breach of the peaceful course in which Japan's political ideas and institutions have hitherto been developed. Nevertheless, it can still be hoped that this intolerance of our government is simply of a transitory nature which will in all probability disappear in the near future; for we know that even the British government, under which even the Legitimist Jacobite League of Great Britain and Ireland which aims at the restoration of the "legitimate" dynasty as represented in the descendants of the elder branch of the Royal Family enjoys a peaceful existence at the present day, was once more strenuous than our government in striving to put down the organized movement of workingmen. We hope that the wisdom and genius of the Japanese people will discover means which will avert the danger of great social antagonism. Inasmuch as the conflict between the rich and the

[1] Freeman, *Growth of the English Constitution*, pp. 20, 21.

[2] *Cf. supra* chs. VII., XV.

[3] *Cf. supra*, ch. XVII.

poor is not yet as paramount in Japan as in Western countries Japan's future career may indeed be a hopeful one if her government and people will but awake to the reality of the serious question which now confronts them, and endeavor to direct their administrative policy into the right path. With the knowledge of the history of the social problem of the West, Japan will learn how to avoid a revolution.

Meanwhile, the problems of the governmental structure such as the extension of suffrage and the reform of the House of Peers will challenge the attention of publicists and people in general. It is almost an established fact that before a nation takes up the task of social amelioration seriously and practically it must pass through a stage in which Liberalism is given full play. The history of England above that of any other country shows us that the movement for the extension of suffrage and the reform of the aristocratic branch of the legislature has been essentially Liberal. But when the Rubicon is once crossed we shall face the problem of social amelioration which compels us to abandon the tenets of Liberalism. Cast a glance at the history of England during the past generation or two, and you will not fail to perceive that the doctrinaire Liberalism as expounded by Bentham, Mill, and Spencer, is a thing of the past. What is the signification of the vast mass of labour legislations[1] since (say) 1870, which makes Herbert Spencer dread the reappearance of slavery in the form of State Socialism?

In Japan, as a matter of fact, a movement for universal suffrage has already been undertaken by a coterie of men, while the necessity of reforming the House of Peers in one way or another has already been advocated by some journals and publicists. The year before last witnessed a wider diffusion of suffrage by the lowering of the property qualification of the electors. Many similar steps will be taken before the problem receives a satisfactory solution. No sooner will uni-

[1] For a complete list of these legislative acts see Howell's *Labor Movement, Labor Legislation, and Labor Leaders.*

versal suffrage or something approximate to it be inaugurated, than the island nation will have to cope with the more thorny problem of social amelioration. Then Japan's political parties and statesmen, whether conservative or liberal, will be dragged to walk the same weary leagues which western peoples are still trudging on.

Such, in brief, shall be the political issues of Japan upon which to focus the thinking of the whole nation, and around which many new, probably divergent, lines of political ideas are likely to spring up. What will be the final outcome no one can pretend to foretell. May the future of Japan be a grand march of political development, and not a series of revolutions, sudden, radical, impetuous in their course, and full of reactions, of contradictory incidents and of contrary examples like the revolutions in France during the past century!

TABLE OF AUTHORS CITED [1]

ALEXANDER, G. G.— *Confucius, the Great Teacher.* London. 1890.

BENTHAM, J.— *Principles of Morals and Legislation.* Oxford

BOSANQUET, B.— *The Philosophical Theory of the State* London. 1899.

BLUNTSCHLI— *The Theory of the State.* Oxford. 1892.

BORGEAUD, C.— *Adoption and Amendment of Constitutions* New York. 1895.

BUCKLE, H. T.— *History of Civilization in England.* New York. 1895.

BURGESS, J. W.— *Political Science and Comparative Constitutional Law.* Boston. 1896.

BUSHBY, H. N. G.— *Parliamentary Government in Japan,* in the Nineteenth Century Review for July, 1899.

BOUTMY, E.— *Studies in Constitutional Law.* London. 1891.

BLISS, W. D. P.— *Mill's Socialism.* New York. 1891.

CROZIER, J. B.— *History of Intellectual Development.* London. 1897.

COLQUHOUN, A. R.— *China in Transformation.* New York. 1898.

COLQUHOUN, A. R.— *The Mastery of the Pacific.* New York. 1902.

CALLAHAN, M. C.— *American Relations in the Pacific and the Far East,* in Johns Hopkins University Studies in Historical and Political Science, series XIX, Nos. 1–3.

[1] References written in Japanese or Chinese are not given in this table. The names of authors are alphabetically arranged.

CURZON, Rt. Hon. G.—*Problems of the Far East.* Westminster. 1896.

CARLYLE, T.—*Heroes and Hero-Worship.* New York. 1897.

COPLESTON, R. S.—*Buddhism Primitive and Present in Magadha and Ceylon.* London. 1892.

CHAMBERLAIN, B. H.—*Introduction to Ko-Ji-Ki, or Records of Ancient Matters*, in the Transactions of the Asiatic Society of Japan. Vol. X. Yokohama. 1882

CHAMBERLAIN, B. H.—*Translation of Ko-Ji-Ki. Ibid.*

CLEMENT, E. W.—*Local Self-government in Japan*, in the Political Science Quarterly. Vol. VII, pp. 294–306.

DE TOCQUEVILLE—*France Before the Revolution of 1793.* London. 1888.

DE QUATREFAGES—*The Pigmies.* New York. 1895.

DONISTHORPE, W.—*Individualism a System of Politics.* New York, 1894.

DICEY, S. V.—*The Law of the Constitution.* London. 1897.

DICKINSON, REGINALD—*The Rules and Procedure of Foreign Parliaments.* London.

EDKINS, J.—*The Antiquity of the Chinese.* An appendix to Rawlinson's Origin of Nations.

EDKINS, J.—*Religion in China.* London. 1895.

ELY, R. T.—*Socialism and Social Reform.* Sixth edition. New York.

FLINT, R.—*History of the Philosophy of History.* Edinburgh and London. 1893.

FORD, H. J.—*The Rise and Growth of American Politics.* New York. 1898.

FORD, P. L.—*The Writings of Thomas Jefferson.* Vol. II. New York. 1893.

FISHER, S. G.—*The Evolution of the Constitution of the United States.* Philadelphia. 1897.

FREEMAN, E. A.— *The Growth of the English Constitutio* London. 1894.

GIDDINGS, F. H.— *Principles of Sociology.* New York. 189

GIDDINGS, F. H.— *Elements of Sociology.* New York. 189

GIDDINGS, F. H.—*Democracy and Empire.* New York. 190

GODKIN, E. L.— *Unforeseen Tendency of Democracy.* Bost and New York. 1898.

GUIZOT, F. P. G.— *History of Civilization in Europe.* Ne York. 1899.

GRIFFIS, W. E.— *The Mikado's Empire.* New York. 189

GRIFFIS, W. E.— *The Religions of Japan.* New York. 189

GRIFFIS, W. E.— *Corea the Hermit Nation.* New Yor 1897.

GRAHAM, W.— *English Political Philosophy.* London. 189

GOODNOW, F. J.— *Politics and Administration.* New Yor 1900.

GOODNOW, F. J.— *Comparative Administrative Law.* Ne York. 1893.

GUIZOT— *History of the Origin of Representative Gover ment in Europe.* London. 1861.

GUBBIN, JOHN H.— *Review of the Introduction of Christiani into Japan and China*, in the Transactions of the Asiat Society of Japan. Vol. VI. Tokyo. 1888.

HOFFMAN, W. J— *The Beginnings of Writings.* New Yor 1895.

HUNTER, SIR W. W.— *The Indian Empire.* London. 189

HEARN, W. E.— *The Government of England.* London an New York. 1886.

HUXLEY, T. H.— *Administrative Nihilism.*

HUXLEY, T. H.— *Evolution and Ethics and other Essay* New York. 1895.

HEARN, LAFCADIO— *Kokoro.* Boston and New York. 189

HAWKS, F. L.— *Narrative of the Expedition of an American Squadron to China Seas and Japan, performed in the years 1852, 1853, and 1854, under the Command of Commodore Perry.* Vol. I. Published by order of the Congress of the U. S., Washington. 1856.

ITO, MARQUIS H.— *Commentaries on the Constitution of Japan.* Tokyo. 1889.

IYENAGA, T.— *The Constitutional Development of Japan*, in Johns Hopkins University Studies in Historical and Political Science. Vol. IX. No. 9.

ILBERT, SIR COURTNEY.— *Legislative Methods and Forms.* Oxford. 1901.

JELLINEK, G.—*The Declaration of the Rights of Man and of Citizens.* New York. 1901.

KEANE, A. H.—*Asia.* London. 1896.

KEENE CIE, H. G.—*History of India.* London. 1893.

KEANE, A. H.—*Ethnology.* Cambridge. 1896.

KEANE, A. H.—*Man, Past and Present.* Cambridge. 1899.

KNAPP, A. M.—*Feudal and Modern Japan.* London. 1898.

KNOX, G. W.—*Ki, Ri and Ten*, in the Transactions of the Asiatic Society of Japan. Vol. XX. Yokohama. 1893.

KINOSHITA, Y.—*The Past and Present of Japanese Commerce*, in the Columbia Studies in History, Economics and Public Law. Vol. XVI.

KAWAKAMI, K. K.—*Socialism in Japan*, in the International Socialist Review, for March, 1902.

LOWELL, A. L.—*Governments and Parties in Europe.* Boston and New York. 1897.

LIEBER, F.—*Manual of Political Ethics.* Philadelphia. 1892.

LIEBER, F.—*Civil Liberty and Self-Government.* Philadelphia. 1880.

LOOS, I. A.—*Studies in the Politics of Aristotle and Plato.* University of Iowa. 1900.

LANDOR, A. H. S.—*Alone with the Hairy Ainu.* Lond 1893.

LECKY, W. E. H.—*Democracy and Liberty.* New Yo 1895.

LOWELL, PERCIVAL—*Esoteric Shinto*, in the Transactions the Asiatic Society of Japan. Vols. XXI., XXII. Yok hama. 1893.

MORRIS, G. S.—*Hegel's Philosophy of the State and of H tory.* Chicago. 1892.

MILL, J. S.—*On Liberty.* New York. 1895.

MILL, J. S.—*Representative Government.* New York. 18

MILL, J. S.—*Utilitarianism.* London. 1897.

MILL, J. S.—*Autobiography.* New York. 1873.

MCKECHNIE, W. S.—*The State and the Individual.* Gl gow. 1895.

MACGOWAN, J.—*A History of China.* London. 1897.

MONTESQUIEU—*The Spirit of the Laws.* London. 1897.

MACKENZIE—*An Introduction to Social Philosophy.* Gla gow. 1895.

MACY, J.—*The English Constitution a Commentary on Nature and Growth.* New York. 1897.

MARX, KARL—*Capital.* London. 1896.

MERIWETHER, C.—*Life of Date Masamune*, in the Transa tions of the Asiatic Society of Japan. Vol. XXI. Y kohama. 1893.

MILNE, J.—*Notes on the Koro-pok-guru or Pit-Dwellers Yezo and the Kurile Islands*, in the T. A. S. J. Vol. Yokohama. 1882.

MILTON, JOHN—*The Ready and Easy Way to Establish Free Commonwealth*, in the *Prose Works of John Milto* Vol. II. London. 1878.

NITOBE, I.—*Bushido the Soul of Japan.* Tokyo. 1900.

NITOBE, I.—*The Intercourse between the United States a Japan.* Baltimore. 1891.

NORMAN, HENRY—*The Peoples and Politics of the Far East.* New York. 1895.

PATTEN, S. N.—*The Development of English Thought.* New York. 1899.

PAULSEN—*A System of Ethics.* New York. 1899.

POORE, B. P.—*Charters and Constitutions.* Washington. 1878.

PROAL, L.—*Political Crime.* London. 1898.

PENNSYLVANIA UNIVERSITY—*Translation and Reprints from the Original Sources of European History.* Vol. I.

POLLOCK, Sir F.—*History of the Science of Politics.* London. 1897.

ROUSSEAU—*Social Contract.* New York and London. 1893.

RITCHIE, D. G.—*Natural Rights.* London. 1895.

REINSCH, P. S.—*World Politics.* New York. 1900.

RATZEL, F.—*The History of Mankind.* London. 1898.

RIPLEY, W. Z.—*The Races of Europe.* New York. 1899.

REIN, J. J.—*Japan: Travels and Researches.* London. 1884.

RAWLINSON, G —*The Origin of Nations.* New York. 1894.

REINSCH, P. S.—*Colonial Government.* New York. 1902.

SPENCER, H.—*Principles of Psychology.* New York. 1897.

SPENCER, H.—*Principles of Sociology.* New York. 1896.

SPENCER, H.—*Social Statics.* New York. 1896.

SPENCER, H.—*Man versus the State.* New York. 1896.

SHRADER, O.—*Prehistoric Antiquities of the Aryan Peoples.* London. 1890.

SEELEY, J. R.—*Introduction to Political Science.* London. 1896.

SMITH, ADAM—*The Wealth of Nations.* Oxford. 1880.

SMITH, G. B.—*History of the English Parliament.* London. 1892.

SEARS, E. H.—*Political Growth in the Nineteenth Century.* New York. 1900.

SEARS, H.—*Governments of the World Today*. Meadvi
1895.

SALEILLES, R.—*The Present Constitution of France*, in
Annals of the American Academy of Political and So
Science.

SELIGMAN, E. R. A.—*Economic Interpretation of History*
Political Science Quarterly, February, March, and Ju
1902.

SHAW, ALB.—*Municipal Government in Continental Euro*
New York. 1895.

SHAW (BERNARD), and others—*Fabian Essays in Socialis*
New York. 1891.

SATOW, E. M.—*Notes on the Intercourse between Japan a*
Siam in the Seventeenth Century, in the Transactions
the Asiatic Society of Japan, Vol. XIII. Yokoho
1885.

TAYLOR, ISAAC—*The Origin of the Aryans*. London. 18

TIEDMAN, C. G.—*The Unwritten Constitution of the Uni*
States. New York. 1890.

WILLOUGHBY, W. W.—*An Examination of the Nature of*
State. New York. 1896.

WUNDT—*Ethics*. Vol. II. London. 1897.

WOODS, R. A.—*English Social Movement*. London. 18

WEBB, SIDNEY and BEATRICE—*History of Trade Unionis*
London. 1894.

YAMAGATA, I.—*The Late Mr. Yukichi Fukuzawa*, in
Orient. Tokyo.

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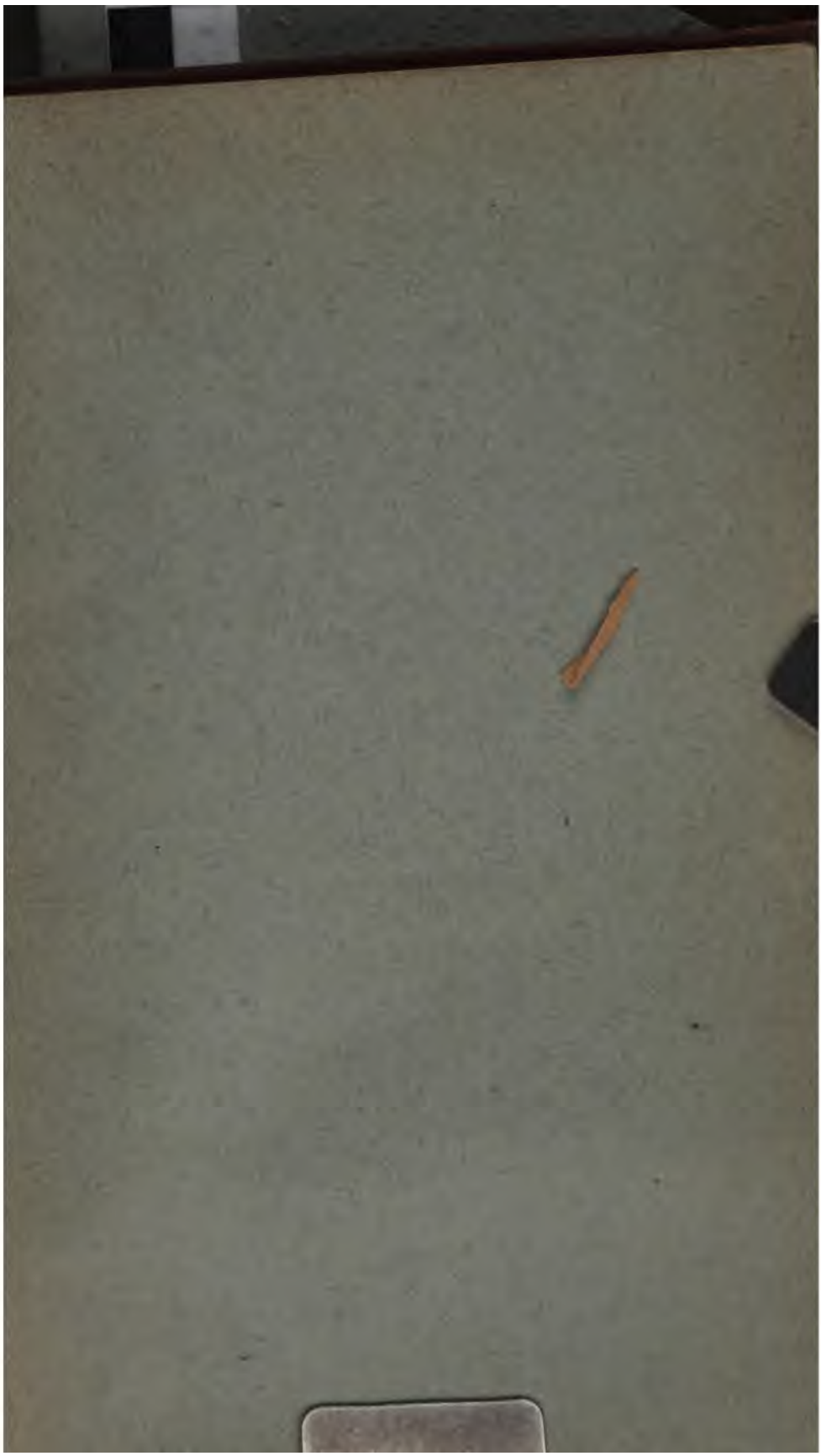
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